



KWAZULU-NATAL
PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA



UPL INCIDENT:

**UPDATE BY DEPARTMENT OF ECONOMIC
DEVELOPMENT, TOURISM AND ENVIRONMENTAL
AFFAIRS (KZN EDTEA)**

08 FEBRUARY 2022

PRESENTATION TO PARLIAMENTARY PORTFOLIO COMMITTEE


PRESENTATION OUTLINE:

1. Background
2. Roles and responsibilities of EDTEA
3. Executive interventions and stakeholder management
 - Multi-Stakeholder Forum (MSF)
4. Cornubia Environmental Info Website
5. Beaches re-opening
6. Administrative enforcement
 - Timelines
 - Appeal
7. Ongoing coordination and review of reports
8. Way forward




- Fire incident reported to the Fire Department on the evening of 12 July 2021 / morning of 13 July 2021.
- Initially eThekweni Fire Dept could not respond due to the sheer scale of the unrest in the province which resulted in approximately 200 buildings being damaged.
- Fire Department was escorted to the incident by the SAPS as looting was taking place at the Makro store in close proximity.
- Incident was attended to by eThekweni Fire Department from approximately mid-morning on 13 July 2021 when the fire was already at its peak – warehouse was already completely engulfed in flames.
- Municipal main water supply was damaged during the unrest:
 - Prevented fire hydrants from working properly
 - Exacerbated the influx into the watercourse and the estuary
- Contents of the warehouse were unknown at that stage but fire was attended to by emergency personnel.

- Discussion between KZN EDTEA and DFFE officials on Friday 16 July 2021 when impacts became pronounced - different to other fire incidents:
 - Difficulty in extinguishing fire.
 - Discoloration of stormwater runoff into tributary and then the uMhlanga estuary.
 - Fish die off were being observed and reported to the DFFE (and KZN Ezemvelo).
- Formalisation of a government response team on the 17 July 2021 with DFFE assisting with notification to UPL (team is led by EDTEA) – Joint Operations Committee (JOC) established.
- Deployment of specialists from EDTEA and DFFE:
 - Health Risk Assessment practitioner/ air quality management.
 - Wetland and aquatic environment.
 - Waste management.
 - Estuarine, coastal and marine pollution incident control.
 - Compliance, Enforcement and Legal.



uMhlanga Estuary



Just north of Durban (eThekweni Municipality)
UPL warehouse 3km upstream of the upper estuary
Umhlanga Nature Reserve (EKZNW)

- Spill response team was activated and immediate control measures were put in place by UPL - SpillTech and Drizit (no runoff from site on 19 July 2021).
- Emergency control measures implemented at the discharge outlet and berms placed in river:
 - blocking of stormwater discharge points into the receiving watercourse to prevent further contamination influx.
 - raising of erosion control weirs with sandbags.
 - pumping out of contaminated water from behind blocked stormwater discharge points and raised weirs.
 - removal of contaminated sediments in watercourses.
- All beaches were closed from Salt Rock to uMgeni River – no bathing or harvesting of marine species until samples were analysed.
- eThekweni Fire Services – updated public in relation to progress made with extinguishing the fire – debris collapsed onto remainder of smoldering pockets.

- Waste management not resolved at the time of the inspection on 22 July – blending with ash and lime (increased PH and could not be disposed of to landfill (consultation with DCLM and EnviroServ – DFFE).
- Authorities intervened and DFFE issued the exemptions on 28 July 2021:
 - Approval to transport liquid waste to Holfontein (Gauteng) – treatment technology in place before disposal.
 - Solid waste transported for disposal to Dolphin Coast Landfill Management (DCLM) (Class A) – waste treated before disposal.

- EDTEA is the authority leading the integrated response of the incident.
- Department is the Chair of the **Joint Operations Committee (JOC)** and oversight of **Cohorts** management:



- Compliance & Enforcement – Directives (S30 of NEMA).
 - Investigations – EIA approvals.
- Media and communication.

- MEC site inspection and briefing on 17 July 2021.
- MEC request to Minister for deployment of specialists from DFFE.
- MEC hosted 2 online meetings with external stakeholders in August 2021.
- MEC physically met with external stakeholders at Reddam House on 04 September 2021.
- Panel of Legal Experts appointed to advise MEC and Department.
- MEC undertook a site visit on 1 October 2021.
- MEC and Minister undertook a site visit on 2 October 2021.
- Minister and MEC issued a Media Statement on 3 October 2021. Minister and MEC undertook to ensure public participation through the launch of the Multi-Stakeholder Forum.



- MEC Pillay launched the Multi-Stakeholder Forum on 23 October 2021. An Interim Committee was appointed.
- The Committee includes representatives from the affected local communities and members of civil society.

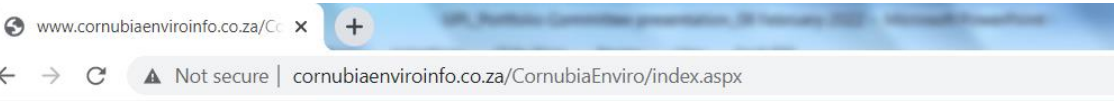
Reps: Kamini Krishna, Rico Euripidou, Francine Hattingh, Keshia Naidoo, Kwanele Msizazwe, Allimuthu Perumal, Kirsten Youens, Desmond D'Sa/Bongani Mthembu (alternate) and Jeremy Ridl.

- Stakeholders have the opportunity to comment on the reports generated (e.g. bi-monthly reports; specialist reports; applications etc.)
- Issues raised are consolidated for responses by UPL and the authorities.



- This **Repository** has been developed primarily to ensure the free-flow and access to information to enhance the transparency of actions relating to the incident response.

<http://www.cornubiaenviroinfo.co.za/CornubiaEnviro/index.aspx>



Cornubia Environmental Info Website



| Date | Document Title | Size |
|---------------------------|--|---------|
| 02-Oct-2021 | Final Compliance Report & Annexures_02.10.2021.pdf | 26595KB |
| Scientific Reports | | |
| 15-Dec-2021 | 15-12-21_Protocol_Exclusion zone.pdf | 424KB |
| 00 Journals | | |
| | Sc. Journal_Arsenic in the Ocean_ JM Neff_Dec 2002.pdf | 3903KB |
| 01 Weekly Reports | | |
| 20-Jan-2022 | Sci. Report_ Bi-monthly Report_20.01.2022.pdf | 13213KB |
| 06-Jan-2022 | Sc. Report_Bi- Monthly report_06.01.22.pdf | 13551KB |
| 23-Dec-2021 | Sc. Report_Apex MER Griffon Preliminary Embargo Statement.A19523. 23.12.2021.pdf | 576KB |
| 21-Dec-2021 | Sci. Report_weekly update_21.12.2021.pdf | 14294KB |
| 03-Dec-2021 | Sci. Report_Weekly report_ 3.12.2021.pdf | 10337KB |
| 01-Dec-2021 | Sci. Report_ Weekly Report_ 1.12.2021.pdf | 8788KB |
| 24-Nov-2021 | Sc. Report_Weekly Report_24.11.2021.pdf | 8870KB |
| 10-Nov-2021 | Sci. Report_Weekly Report_10.11.2021.pdf | 5692KB |
| 03-Nov-2021 | Sc. Report_Weekly Report_03.11.2021.pdf | 5142KB |
| 27-Oct-2021 | Sci. Report_ Weekly Report of Specialists to JOC (Incl. Annexures) - 16 to 22 October 2021 - 27 Oct 21.pdf | 4776KB |

- The website serves to provide an opportunity for the various stakeholders making up the team to provide reports to the public domain with a joint objective of instant dispersal of information and openness to all interested and affected parties.
- All information and reports received which should be disclosed are done so in a coordinated manner with equitable access to all interested and affected parties.

| | |
|---|---|
| Online since 12 Oct 2021 | Docs/reports 139+ |
| Registered users 80+ | Documents downloaded to date 1246+ |

- Beaches from Salt Rock to the uMgeni River mouth (40 km) were closed to the public on 16th July 2021 as a precautionary measure.
- UPL were instructed to sample sea water and sediments and prepare reports addressing the water quality and risks associated with the contamination.
- Specialist reports were received and workshopped on the 8th September 2021. Reports were rejected as unsuitable due to incorrect concentrations used, documents that did not reference the spill in question and submission of unsigned reports.
- UPL was instructed to prepare a consolidated Beaches Report that combined all experts' information and pronounce on the sea water quality and what activities would be safe and in what locations.



- No further report of fish kills.
- Report recommending opening of beaches received from UPL on 24 September 2021.
 - Report was referred to UK-based Professor Jason Weeks for peer review.
 - Professor Weeks also recommended the opening of beaches with an exclusion zone recommended.
- MEC Media Statement on Opening of beaches:
 - Beaches that were closed were to open with effect from 02 November 2021 (96% re-opening of previously closed beaches).
 - Exclusion zone of one kilometre North and South of the Mhlanga Estuary mouth and one kilometre out to the sea.
 - Harvesting of fish and other marine creatures remain prohibited between the areas north of uMgeni estuary mouth to Salt Rock (i.e. 40 km).
- DFFE as the competent authority is currently engaging UPL on the embargo on marine harvesting.
A report in this regard is expected next month (March 2022).

NEMA S28 Pre Directives (EDTEA) – 20 and 28 July

- Urgent interventions / actions communicated to the company.
- Amended to integrate DWS requirements.

NEMA S30 Reporting – Ongoing

- Initial incident report received.
- Detailed report received.
- Pre-Directive Issued on 11 August 2021.
- Directive issued on 17 August 2021.
- Augmented Pre-Directive issued on 29 September 2021.
- Directive issued on 28 October 2021.
- Warning Letter - PCD management issued on 17 December 2021.



- To cater for emerging issues as the situation unfolds.
- To instruct UPL to submit the following information/reports:
 - Air Quality Impact Assessment Report
 - Estuarine, Coastal and Marine Specialist Study Report
 - Vegetation Specialist Study Report
 - Geohydrological Model
 - Human Health Risk Assessment
 - Occupational Health Risk Assessment



- Subsequent to UPL's intended Appeal submission, they requested to continue engaging with authorities.
- JOC Chairperson sought internal legal guidance and was advised that in the interest of the environment and the public, such engagement may occur; however was advised that no discussion on the Appeal process and the merits thereof should be entertained.
- On 8 November 2021, JOC met with UPL representatives. Meeting outcomes:
 - It was agreed UPL would submit report that were ready/soon to be ready. Most of the reports have subsequently been submitted.
 - UPL and JOC subsequently held a joint session on 18-19 November 2021, wherein the UPL appointed specialists unpacked the reports for authorities comment.

- Augmented Pre-Directive in terms of Section 30(6) of NEMA issued to UPL on 29 September 2021.
- Representations received from UPL Lawyers on 15 October 2021.
- Directive issued to UPL on 27 October 2021.
- UPL Appeal against the Directive received on 28 October 2021.
- Department submitted the Responding Statement on 12 November 2021.
- Appeal was considered by the MEC and dismissed on 04 December 2021. MEC said S30 made no provision for such an appeal but asserted that had such provision been available, he would have upheld the Directive based on the strength of the evidence in front of him.

- Approximately 60 mm of rain fell over a 48hr period over in December 2021.
- Additional stormwater from the Makro platform area flowed into the Pollution Control Dam (PCD).
- This increased the pressure of the storage capacity of the PCD and there was concern that the polluted water would spill into the stream and make its way to the estuary and the sea.
- A Warning Letter was issued on 17 December 2021 to proactively address the increase in PCD's volume.
- UPL responded 23 December 2021 – providing measures to address the Department's concerns.
- The PCD's volume has since significantly decreased below alert levels. Contaminated water continues to be taken to Holfontein and DCLM for treatment and safe disposal.

- Ongoing consultation with other authorities – requiring continuing coordination – review of specialist reports.
- Daily responses still needed and coordinated (e.g. beach guards, disposal of waste, monitoring the PCD level).

‘There has never been an incident of this magnitude in the history of South Africa’ - *Senior Green Scorpions enforcement director Grant Walters.*

- Focus is moving towards the consideration and review of the Integrated Rehabilitation Plan.



1. Authorities, through JOC, to continue ensuring that UPL complies with its legal obligations in responding to the fire incident.
2. Ongoing management of the NEMA S30 processes and reporting.
3. Ongoing coordination and integration of rehabilitation responses through JOC.
4. Ongoing stakeholder engagement and information dissemination.
5. Ongoing compliance and enforcement (administrative and criminal).

It is recommended that the Portfolio Committee on Environment, Forestry and Fisheries notes this update report on the fire incident and related pollution that occurred at the UPL South Africa Pty (Ltd) facility in Cornubia, eThekweni Metro.

THANK YOU

**GROWING
KWAZULU-NATAL
TOGETHER**