



# HOUT BAY RESIDENTS' & RATEPAYERS' ASSOCIATION

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April 2014

Ian Gildenhuis  
Head Specialised Environmental Health  
City Health

Dear Mr Gildenhuis,

## **RE: Dealing with the noxious smell from the Oceana fish factory**

Over the past 12 months, the Air Pollution portfolio of the Hout Bay Residents' and Ratepayers' Association (HBR&RA) has been engaging with the City of Cape Town and Oceana to better understand some of the issues surrounding the noxious smells emanating from the fish factory in the Hout Bay harbour. Throughout this process, we have found a number of challenges and inconsistencies. We would like to table these concerns at the next sub-council 16 meeting for further clarification, as part of our efforts to eliminate the smell from the town.

Below is a detailed account of the information we have received and the questions that arise from its study.

### **1. Registering the smell as a public nuisance**

HBR&RA requested information on the process to register the smell as a public nuisance and received the following information from Councillor Benedicta van Minnen in August 2014, which was again confirmed by Ed Filby from the Department of City Health, Specialised Environmental Health, Air Quality Management Unit, in April 2015:

*"The same authority that has issued a premises a licence to operate a listed activity that is known to be an operation that generates malodours and for which there are no emission limits specified in the Listing Notice, cannot on the one hand licence the premises and on the other hand prosecute them for nuisance odours. Should any prosecution need to take place, this would need to be conducted in terms of the Air Quality Act with its R5 Million Rand penalties. As there are no contraventions of the Air Quality Act we are not in the position to prosecute Luck Star."*

Essentially, this statement indicates that because the City of Cape Town has chosen to issue an operational licence to Oceana, there is no process for the community to register the smell as a public

nuisance, despite widespread community concern. We believe this is unconstitutional. Councillor van Minnen further states that she is of the view that Oceana has *“technically done all that is reasonably practical to control odours”*.

This raises two specific questions. First, why does the City continue to issue an operational licence despite the noxious odours and continuous complaints from the community, and why can this licence not be withdrawn? Second, in a situation such as this, what mechanisms are in place for the concerns of the community to be regarded, to the extent that they can take action against the smell? Despite Oceana doing all that is ‘reasonably practical’ this is not enough and the smell persists, causing economic, social and environmental harm to the community. Councillor van Minnen states that in such a case the *“odours must be tolerated by the broader community”*. It appears that the interests of Oceana are put before the interests of the community. We believe this is unconstitutional, considering our basic right to live in an environment that is not harmful to our health and well-being.

## **2. Technicalities for issuing an emissions license**

There are two areas of concern regarding the technical requirements for the Atmospheric Emissions Licence that Oceana requires to operate.

- **Complaints Register.**

- According to Mr. Ian Gildenhuis, City Health, Oceana is required to have a complaints register in place as part of their Atmospheric Emissions License and *“their Production Management are required to assess each complaint against operating conditions.”*
- HBR&RA was informed that to retrieve this information, we would need to send a request to the City for the C3 complaints register, following the process outlined in the Promotion of Access to Information Act, 2000.
- HBRRA has followed this process and in September 2014 requested access to the registers for the past five years of operation (2010 – 2014). After months of correspondence with various information officers, it appears that a comprehensive register of all complaints logged simply does not exist - we have received some of the complaints registered by Oceana from 2010 - 2013, but there is no record of complaints registered directly with the City, nor of the complaints registered telephonically through the factory. With the lack of a comprehensive document, it is therefore reasonable for HBR&RA to assume that this complaints register is not considered an important component of issuing the Atmospheric Emissions License.
- Without a comprehensive documentation of complaints, and with the inability to register the smell as a public nuisance, how can residents be assured that their concerns are being taken into account, and that their constitutional rights are being protected?

- **Measures for control.**

- According to Section 35 of the NEM: Air Quality Act 35 (1) *“The Minister or MEC may prescribe measures for the control of offensive odours emanating from specified activities.”* We have been informed by Councillor van Minnen that to date *“neither the Minister or MEC has chosen to do so.”*
- HBR&RA would like to know why this is the case. According to Mr. Gildenhuis, *“Odour has many different causative agents, each with a different threshold of smell. Setting a standard would be extremely difficult.”* While we appreciate that this is, indeed, a complex process, we do not feel that this is a valid reason for not setting a limit.
- What process would we need to embark on to engage proactively with the Minister or MEC to set these limits to address the concerns of the community?

### 3. Health implications of the smell

The City of Cape Town and Oceana state that there are no negative health implications caused by the smell from the fish factory. This raises two specific questions.

- **Definitions of health and well-being.**
  - Section 24 of the South African Constitution states that everyone has the right to “*an environment which is not harmful to their health or well-being*”.
  - Over the years, residents have raised complaints citing nausea, headaches, scratchy eyes and noses, aggravated asthma, discomfort, insomnia, and lack of concentration as a direct result of the smell from the fish factory. These concerns directly influence conditions of both health and well-being yet are not considered as valid concerns by the City.
  - HBR&RA would like to know why this is the case and what definitions and parameters the City uses to determine impacts on health and well-being. In correspondence sent by Councillor van Minnen in August 2014, it was indicated that a Health Risk Assessment was being conducted but we have not heard of the results of this study. Where can this information be obtained and what are the results?
  
- **Contradiction of information.**
  - While representatives of City Health maintain there are no negative health implications, contradicting information has been received. As stated in the sub-council minutes dated 19 August 2013 (16 SUB 51/08/13) referring to the application for consent in terms of the Land Use Planning Ordinance for ERF 8474 in Hout Bay, it is stated that “*the Health Department and other objectors raised serious health concerns – the fish odour is unbearable and may be a health hazard for those living in close proximity to the fish factory*” and “*due to health concerns, the area is not suitable for housing purposes.*”
  - In further correspondence received from Councillor Marga Haywood to HBR&RA in November 2014, the following was stated: “*The City has purchased for R10 million a plot of land at the bottom of the Road leading up the hill to Hangberg. The plan was to build residential CRUs (Community Residential Units) on the land but an expert health study has stated that proximity to the Fish Factory with its inevitable noxious emissions renders this land unusable for residential buildings. Thus the City has the embarrassment of having acquired expensive land which as yet has no purpose.*”
  - How is it possible that on the one hand, the department claims no negative health impacts, yet on the other hand states directly that the noxious emissions from the factory render the area unfit for residential development? HBR&RA believes this to be a blatant contradiction – it is clearly stated that noxious emissions are a health hazard, and yet Councillor van Minnen and City Health insist that the “*odours must be tolerated by the broader community.*” It is, therefore, reasonable to assume that the City is deliberately choosing to ignore these health concerns and is willingly subjecting the residents of Hout Bay to harmful odours that have a direct influence on the health and well-being of the broader community.

### 4. Breach of the Air Quality Management By-Law

HBRR&A is aware of the Draft Air Quality Management By-Law 2015 that is currently open for comment and it is our intention to submit substantial comments about this document. Our initial examination of the document, however, leaves us with some critical questions. Specifically, Chapter IX, 26-1-c states:

*“No person shall... cause any reasonable interference or likely interference through air pollution which may adversely affect the health or well-being of any person or living organism; or the use and enjoyment by an owner or occupier of his or her property or environment.”*

It is abundantly clear that the smell from the Oceana fish factory is in violation of this requirement – with hundreds of complaints registered, more than 1,000 signatories on a petition, and thousands of people actively voicing their concerns about the smell, **the smell has a direct and negative impact on the health, well-being and enjoyment of people living in Hout Bay.**

How is Oceana allowed to maintain their operation when the smell they produce is in direct violation of this by-law, and what is the City doing to hold them accountable? No information is provided on how this is being handled. In Mr Filby’s April 2015 letter, he acknowledges that “very unpleasant” and “rancid” smells have been recorded, and yet there is no action taken against this. How is the City addressing the violation of this by-law, and addressing the concerns of the residents of Hout Bay?

In addition to the concerns and questions we raise above, we would also like to inform you of the activities HBR&RA has undertaken to engage proactively with the community of Hout Bay to address the issue.

**Formation of Fresh Air for Hout Bay.** Under the leadership of the Air Pollution portfolio, the community organisation Fresh Air for Hout Bay (FAHB) has been established and currently engages with over 2,500 people, all of whom believe the smell is unacceptable. This group has as its objective the elimination of the smell from the fish factory and is undertaking a systematic community engagement process to do this. Some of the activities include:

- **Stakeholder Meeting with Oceana:** In August 2014, members of FAHB met with Oceana for the first stakeholder meeting to discuss issues relating to the smell. The meeting did little to address the concerns of the community and instead Oceana emphasised that ‘nothing can be done’ to eliminate the smell. This is an unsatisfactory outcome and while Oceana claims to be operating completely within the law, it became evident that further engagement with the City of Cape Town would be necessary. Detailed minutes of this meeting can be found [here](#).
- **Creation of FAHB Website:** FAHB has established a new website [www.smellsfishy.co.za](http://www.smellsfishy.co.za) that provides comprehensive information on the issues surrounding the fish factory, including the current legal status of the factory, information received from the City, questions regarding health, and different avenues of engagement, including a community survey, a petition and participation on social media discussion platforms. It is our intention that through this website, we will be able to provide factual information and regular updates to the community in support of our cause to eliminate the smell from Hout Bay.
- **Petition against the smell:** FAHB has launched a petition calling for the City of Cape Town to take action to address the noxious emissions from the fish factory. This petition currently has over **1,000 signatories** and can be viewed [here](#). As part of this document, we are formally submitting this petition to the City of Cape Town and expect a detailed response in return.
- **Active participation on social media:** FAHB is coordinating two main social media sites to communicate with the community. [Fresh Air for Hout Bay](#) is the official page that provides direct communication about FAHB’s current activities. [Hout Bay Fish Factory Clean Up](#) is a discussion panel for community members to voice thoughts and concerns. Between the

two groups we have more than 2,500 supporters.

- **Encouraging the complaints registration process:** Despite the concerns and inconsistencies raised above regarding the complaints registration process, FAHB has been actively encouraging community members to register complaints each time they are affected by the smell. Complaints are directed to the [fish factory website](#) and despite the blatant lack of effort made by Oceana to proactively communicate with the community, we are supporting the mechanisms that exist.

HBR&RA considers the smell from the fish factory to be a blemish on the community of Hout Bay and that it exerts a serious negative influence on this area's otherwise high tourism potential, thus resulting in a loss of employment opportunities which are desperately needed. Thus we sincerely hope that the concerns of the community will finally be taken into account and the necessary actions taken to eliminate the smell.

In addition, we firmly believe that there are solutions to the problem. While we are not advocating that the factory necessarily be shut down, we would be very interested to consider other opportunities that might offer a range of positive benefits to the community. We would like to engage with the City of Cape Town to conduct an investigation into the true sustainability of the fish factory in the harbour. Taking into account concerns of employment and job creation, environmental sustainability, and social cohesion, we believe that the current situation offers an opportunity for both the City and the community to be leaders in the sustainable development of Hout Bay. We would like to use this opportunity and look forward to further engagement with the City to create a healthier, happier and more sustainable society for all.

Please feel free to contact us should you require any further information.

Sincerely,



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