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The Right to Know, the Duty to Inquire the Obligation to Act



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RE: MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES, MS TINA JOEMAT-PETTERSSON AND MINISTER OF WATER AFFAIRS, MRS EDNA MOLEWA FAIL FISHERMEN, MARINE LIFE AND RESIDENTS OF ETHEKWINI MUNICIPALITY

This letter is addressed to you, the ministers responsible for fisheries and water. This letter is to bring to your attention that your departments have failed the residents of eThekweni and allowed municipal authorities to violate our rights to a clean and healthy environment. You as ministers have allowed the municipal municipal authorities as well as the petrochemical and chemical industries to violate these rights by dumping sewage, chemicals and products from the petrochemical industry into the rivers, canals, Durban harbour and Indian Ocean.

Release of sewage

We have brought this to the attention of officials in the National Fisheries, National Water Affairs and to the eThekweni law enforcement department who have failed to take action and enforce the law. We strongly objected to the manner in which maintenance has been carried out by the infrastructure and waste water works in Durban and despite this raw sewage continues to be dumped into the ocean. Taking into consideration that it is a large station, approximately 15 million litres of raw sewage will be spilling into the Umhlatuzana River, which will work its way through various communities, the Kenneth Stainbank Nature Reserve and down into the Durban Harbour. We object to this because:

Health risks

When sewage water is improperly disposed into rivers, lakes and oceans it will have serious health impacts. Some of the illnesses which can occur include meningitis, typhoid, gastroenteritis, hepatitis, salmonella infections, cholera, bacillary, dysentery, ear infections, conjunctivitis, pneumonia, septicemia, skin rashes and diarrhea.

Eutrophication

Sewage also contains high levels of nutrients such as phosphate and nitrates which has lead to the “deaths” of rivers and lakes and seas through eutrophication. High levels of phosphate and nitrates promote rapid growth of algae. Despite algae growing, it will eventually die and decompose and in return will remove dissolved oxygen from the water. As a result of the unavailability of oxygen, many fish and other animals will die.

Chlorine

Sewage water has some degree of chlorine or similar agent. The chlorine or other disinfectant reacts with organic matter to create different end-products, such as chloroform or haloketons, which can be harmful in either the short or long term.

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Death of fish and other marine lives

As mentioned before, as chemicals enter this river, inevitably that process will kill fish and other marine organisms. In December 2007, there was a similar catastrophe as sewage water was dumped into the Umhlatuzana River which ended up into the Durban harbour. As a result, thousands of fish were killed, along with other marine life. In the same year, sewage spillage into the Umgeni River caused hundreds of fish to be killed. According to municipal authorities this was due to load shedding that affected the local pump station. Apart from sewage been spilled into the rivers, chemicals industries are also affected the marine life within eThekweni. In September 2007 thousands of fish were found floating in the harbour after the Island View storage depot exploded, releasing several toxic chemicals into the waters. In a more recent event which occurred on the 8th January 2014, AGAIN, thousands of dead fish and sea birds were washed up on the banks of the Isipingo River mouth. Municipal authorities are playing the “I cannot comment” game – which is utter nonsense as they have a responsibility to the citizens of Durban. It has been reported by all the local press, however, that the pollution came from a nearby industry, as the water was pitch black in some places and had a sewage-like smell.

Lack of confidence in eThekweni municipal officials

In the appendix, please find a set of reports that are in the book edited by Professor Patrick Bond, *Durban's Climate Gamble* (Unisa Press 2011), reflecting upon the last time we suffered the wholesale dumping of sewage into the Durban harbour. The lack of transparency and the repeated misstatements by leading eThekweni officials give us hesitation to trust the current management of our water and sanitation services. What steps were taken to correct the obvious crisis conditions caused by malgovernance in 2007- 2008?

Restrictions put on fishermen

A few years ago Transnet and the Ports Authority decided to deny the subsistence fishermen access to the Harbour and piers and beaches which historically and culturally they fished off since time immemorial. It is shocking however, that South African government had granted 10 foreign vessels permission to harvest in our waters. Double standards don't you think?

Sadly even today the fishermen are fighting a constant battle whereby they are chased from fishing spots. It is utterly ridiculous for this as these fishermen have permits to fish in these designated areas. It is preposterous to have these men and women chased away as many of them rely on fishing as a means of survival. Many of these fishermen are unemployed and rely on the fish for food. It is disturbing to know that the fish are

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poisoned and often found dead due to chemicals in the water and that these poor people are being chased away by officials.

Blue Flag Status

It is sad that eThekweni does not have a Blue Flag – the main international tourist standard – on any of its beaches. In a few select areas (notably not including South Durban), the officials applied for pilot Blue Flag Beach status, and then will attempt to apply for a full Blue Flag. But how will this be possible if sewage is to be dumped into rivers, canals, harbors and oceans?

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APPENDIX:

Excerpt from Patrick Bond, *Durban's Climate Gamble*, University of South Africa Press, 2011. (References below available upon request)

The catalyst for widespread civic concern and embarrassing press reports was the sudden appearance of tens of thousands of dead fish in Durban's harbour during the December 2007 holidays, but concern reached a peak when the city's once proudly-acclaimed Blue Flag beach status was revoked in 2008. According to award-winning environmental journalist Tony Carnie (2008a) of *The Mercury* newspaper, nearly two months passed before it was determined that the failure of a city sewage works was responsible for the 2007 fish kills, in part because of municipal obstruction of information:

The findings by the Council for Scientific and Industrial Research (CSIR) follow repeated denials by municipal manager Mike Sutcliffe that raw sewage spills were the primary cause of the massive die-off of fish and other marine life just after Christmas Day. The CSIR report, compiled by researchers Steven Weerts and Shamilla Pillay on behalf of the National Ports Authority, contradicts Sutcliffe's assertion that a combination of rainfall, industrial spillages and other factors played a role in the death of thousands of fish in Durban Harbour from December 26 to December 27.

This was not the first time that the Umhlatuzana River, feeding the harbour, suffered extreme pollution, but on no prior occasion in living memory was the damage so severe. According to Carnie (2008b), a March-August 2007 sewage spill of 17 million litres into the same river was due to the blockage of a major sewerage pipe near Queensburgh. This was blamed on illegal dumping by a local company (Commercial Waste Services), which resulted in the municipality filing a lawsuit seeking damages of \$200,000. Macleod testified that because of the blockage, "a section of the sewer main had to be relaid and sewerage discharged to the (Umhlatuzana) river for a period" – while the firm's chief executive denied the charges, accusing Macleod of "barking up the wrong tree in an attempt to find a scapegoat for recent fish kills in Durban harbour." A corroborating report about the fish kills for the city by water quality consultants Tickey Forbes and Nicolette Demetriades (from Marine and Estuarine Research) was requested by Carnie (2008b) but

deputy health head Siva Chetty has refused to release it to *The Mercury*, despite repeated requests. Chetty was appointed by Sutcliffe to deal with all media queries on the fish kill, and his refusal to release the report has fuelled suspicions of a city hall cover-up or a reluctance to acknowledge sewage management problems.

A few weeks later, Carnie (2008g) alleged that in providing only partial reports about the broken pipes to Council,

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Sutcliffe appears to have gone out of his way to discredit or suppress much of the evidence... When *The Mercury* asked for a copy of [Durban city official Andrew] Mather's report, Chetty maintained that it was an "internal report" and that some of the contents had been incorporated into the reports submitted to councillors. However, *The Mercury* has obtained a copy of Mather's report, from other sources, which says: "There is no doubt in my mind that the fish kill is directly attributable to the amount of nutrients built up from sewerage inflow that entered the bay, and no other causes." It also pours cold water on several of Sutcliffe's statements on other possible causes of the fish kill such as heavy rainfall washing pollutants into the bay, toxic spills or other waste-water discharges.

Another report on Durban's rivers emerged at the same time, by water quality consultant Mark Graham as part of the national Department of Water Affairs and Environment's *State of South Africa's Rivers Report* on the Umngeni and neighbouring river catchments. Graham "highlighted several cases of broken sewage pipes and overflows and poor treatment at several eThekweni municipal sewage works," according to Carnie (2008f). As Carnie (2008j) reported,

The eThekweni Municipality has been singled out as one of the "most significant" polluters of some rivers because of the failure to repair burst sewer lines and poor management at some waste-water treatment plants... Where the Mlazi River flows into the concrete Umlaas Canal section, he found "geysers" of raw sewage bubbling up from the bottom and test samples showed readings of 280,000 counts of E.coli/100ml of water during his latest 2007 survey. Graham reported similar high readings of E.coli to authorities during the 2006 survey, but it appeared that "little had been done" to fix the problem. In the Isipingo River, E.Coli concentrations of 440,000 counts/100ml were recorded in the latest survey... The South African guideline for acceptable recreational contact was set at 130/100ml.

Macleod confirmed that these were problems associated with irregularity of maintenance, but shifted the blame in a manner that can be read in race/class terms: "We are often called in to unblock the same sewer lines. Then we find anything from sheep heads, rocks, shoes and buckets, rags or newspapers dumped in these pipes. This is a process of education, to get people to realise that sewers are not rubbish dumps' (Carnie 2008j). Yet Graham's report was much more specific about areas where Macleod's own department was most responsible. For example,

the Umbilo municipal waste water treatment works was having a "highly significant and negative impact" on the health of the Umbilo River. It was "probably the biggest single point-source impact on the Umbilo. Little appears to have changed in this system for the last 10 years." Parts of the Umkhumbane (near its confluence with the Umbilo) was home to rat-tailed maggots as well as "sewage/ blood worms." These maggots have special "snorkels" to breathe and survive in the most highly polluted environments. Sewage worms are also specially adapted to surviving in very foul water. The Umhlatuzana,

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Hammersdale and Izimbokodweni waste-water works or pump stations were all especially problematic. (Carnie 2008j)

Moreover, according to Graham (South African Department of Water Affairs and Environment 2008),

The following are some recent E.coli results illustrating that the provision of goods and services by these rivers have been compromised by poor management of human activities and infrastructure relating to faecal contamination: Mayville Stream, a small stream between Mayville and Westridge Tennis Stadium, E.coli up to 290,000 per 100ml of water. (Cause: Informal communities - inadequate sanitation). Bellair Stream, E.coli up to 310,000. (Cause : informal community.) Aller River, New Germany. E.coli:up to 400,000. (Cause: informal community - inadequate sanitation). Umhlangaan River above Kwamashu waste water works. E.coli up to 240,000. (Cause: broken sewers in Kwamashu Township). Isipingo River above the Isipingo waste Water Treatment Works, E.coli count up to 10,000,000,000,000 and exceeding 100,000,000, 60 percent of the time. (Cause: broken sewers in uMlazi Township). uMngeni River at Kennedy Road, E.coli up to 1,080,000. (Cause: Informal Community on the banks of the Palmiet River.) This is an example of the impact that a community on a small river can have on a larger river! uMlazi River below Fongozi Stream, E.coli up to 720,000. (Cause: broken sewers in uMlazi township). The Slangspruit just above Pietermaritzburg and the Baynespruit within the City boundaries, have recently contained E.coli counts of 670,000 and 610,000 per 100 ml respectively.

What the “poor management of ... faecal contamination” explicitly suggests is the failure of Durban authorities to offer adequate sanitation in shack settlements (“informal communities”), which in turn creates vast public health threats across a very large geographical area. At the level of basic pipe maintenance, it transpired that, as Carnie (2008h) reported,

heavily polluted water from a punctured sewage pipe appears to have been flowing into Durban harbour via the Umhlatuzana River for up to nine months – reportedly the result of a bungled repair job by eThekweni council contract workers. A *Mercury* investigation on Tuesday also disclosed evidence of illegal discharges of a resinous waste into council sewers in the Seaview area. Sewage was still gushing into the river on Tuesday morning, despite the fact that municipal manager Mike Sutcliffe said on December 28 he would “leave no stone unturned” to get to the bottom of a massive fish kill in Durban harbour over the Christmas holidays...

According to staff at a nearby shoe factory, the overflow into the Umhlatuzana started in April last year when eThekweni council contract workers cut a hole in the pipe with oxy-acetylene torches to relieve pressure from a blocked sewage pipe near the corner of Umhlatuzana and Harden roads in Seaview. Neil Macleod, head of the eThekweni Water and Waste department,

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expressed surprise on Tuesday when *The Mercury* alerted him to the problem. Macleod said he had asked staff for a full report on the matter, but he disputed that the pipe had been leaking for nine months. He suggested the problem could be very recent. Nevertheless, correspondence shown to *The Mercury* suggests that the municipal manager's office had been made aware of the blockage – and the possibility of an illegal stormwater to sewer pipe connection – eight months ago.

According to Macleod, “contractors had been employed to fix the problem between March and August [2007, but] sewage had flowed into the Umhlatuzana for approximately five months as there was nowhere else to divert the flow while the blockage was cleared.” As for the leak in early 2008, “This latest overflow into the river appears to be quite recent. It may be a result of vandalism, but I can't say that categorically until we have investigated further” (Carnie 2008h). In February 2008, Macleod (2008b) formally replied to the charges of mismanagement of rural sanitation as follows:

A piped sewerage system is not economically justifiable in rural areas, where the densities are too low, and in these areas onsite sanitation is the only viable option available. The rapid densification of the municipality has led to the run-off of untreated sewerage and polluted storm water into a number of rivers. It can be reasonably expected that the housing backlog will be eradicated by 2015 and only then will the problems faced through informal settlement pollution washing into the streams, be finally solved.

The first sentence above is contradicted by the second, because “rapid densification” should be the basis for running subsidised sewage pipes to even informal settlements. The third sentence puts the onus for sanitation on housing construction yet even at that point there were persistent crises in the municipality's housing department, leading to widespread scandals over improperly-constructed residences by developers with close political connections to the ruling party. In addition to blaming low-income people for not having access to sanitation as well as companies that illegally dumped waste in the sewage system, Macleod (2008b) also blamed Durban's higher-income citizens:

Residential property owners have surfaced large areas of their property and often find that the run-off during times of heavy rainfall cannot be catered for by their storm water drainage system. This problem is worsening as storm intensities increase. The solution used by residents is to lift sewer manholes and allow the storm water plus the attendant sand and refuse to be carried into the sewers where it is deposited and later causes blockages... In certain communities, children also see the sewerage system as a source of entertainment. Objects such as stones, twigs and glass when dropped into a sewer manhole are carried away by the effluent. What is not realised is that these foreign bodies accumulate at a change in grade and cause a blockage of the sewerage system.

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For Macleod (2008b), the solution was not to upgrade storm water drainage capacity but instead to spend more money on citizen education. He concluded by effectively conceding defeat, in denying the possibility of “pristine” river quality (no one would reasonably expect as much – but instead to meet national guidelines for ecologically-healthy rivers), in creating a “tension” between people and aquatic life, and in positing different standards between inland and coastal rivers:

It cannot be expected, however, that the rivers in our fast-growing municipality, at the levels of poverty and abuse of the sewerage system we experience, will return to a pristine condition. There is also a tension between achieving a river quality that is acceptable for humans and one that is acceptable for the aquatic creatures that live in our rivers... The Graham report often refers to nutrient enrichment and nutrient levels that exceed national standards. While these standards may be applicable to certain inland rivers, they are not generally applicable to coastal rivers (Macleod 2008b).

In March 2008, yet another fish kill was recorded: “Hundreds of dead fish are floating in the Joyner Canal in Prospecton, Durban. And nearby, authorities are oxygenating the waters of Isipingo lagoon to try to save fish and crabs from dying... After Tuesday’s downpour, the canal had flooded its banks, spilling into some adjoining properties’ (Ryan 2008). Another factor that played a role at the same time was Eskom’s periodic “load-shedding” (a colloquium for brown-outs). According to Macleod (2008b), “There are also sewage spills into the harbour waters from time to time, particularly with the introduction of load shedding, which has contributed to the pollution load in the harbour sediments.” Specifically, he continued, Durban has

292 sewage pump stations and 132 water pump stations. Of these, about 40 are equipped with standby generators – these are the stations where electricity supply was not considered sufficiently reliable at the time of installation. Load-shedding has changed the picture completely. We estimate that in any cycle of load-shedding about 20 sewage stations overflow to varying degrees... We monitor the condition of the rivers and have not yet seen a significant impact on the rivers in the municipality as a result of these spills – presumably because most are of short duration and comparatively low sewage volumes are involved (Macleod 2008b).

In these two statements we learn that the harbour was polluted by sewage from load-shedding in early 2008, but that the impact was not “significant,” another case of mixed signalling. After mid-2008, with the crash of metals and minerals prices, demand for electricity in smelters and mines eased so a reserve was built up again and there have been no further reports of sewage spillage for this reason. Energy shortages may or may not continue, what with a vast increase in Eskom’s generation capacity through two new coal-fired plants that will be the world’s third and fourth largest once on-line beginning in 2012. This in turn will contribute to South Africa’s exceptionally high carbon dioxide emissions.

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Climate change and extreme weather events can be expected to exacerbate Durban's water management challenges. In March 2008, for example, rainstorms led to the closure of the two major Durban oil refineries, and according to Carnie (2008d),

Municipal staff also had to break open the mouth of the Isipingo River yesterday to prevent a tide of raw sewage from wiping out fish life in the Isipingo estuary after several large sewage lines were torn open. Some sources estimated that up to 30 million litres of untreated sewage had flowed into the river in a day, and it could take several days to plug the flow... The storm caused severe flooding of homes, businesses and other buildings and several major routes could not be used because of high water levels... One of the immediate consequences for neighbouring residents in Wentworth, Austerville, Merebank and other suburbs were clouds of burning petroleum vapours being emitted from the flaring stacks of both refineries. Desmond D'Sa, of the South Durban Community Environmental Alliance, said residents had been subjected to 16 hours of flaring from the Engen refinery. Flaring is normally an emergency process whereby the build-up of high levels of petrol vapours are burned up rapidly to reduce the danger of explosion during a sudden shut-down. Elsewhere, the floods ruptured a large sewerage pipeline in at least two places in the Umlazi area.

Even before climate change effects are fully felt, the damage already done to Durban because of inadequate maintenance on pipes, stormwater drainage undercapacity and sewage station breakdowns has been severe. Several urban beaches are the core attraction behind the city's leading position in domestic tourism, and they also suffered severe reputational decline. Between 2007 and mid-2008, the international Blue Flag status that six Durban swimming beaches enjoyed was revoked. The initial reasons at the two main beaches (North and Addington) were "poor quality of ablution facilities, litter problems and poor beach sand quality" but according to Carnie (2008e), subsequent

regular tests showed the two beaches had been unable to comply with World Health Organisation and South African standards for recreational water quality... 100 parts of faecal pollution/100ml of water, whereas Durban samples collected on February 12 [2008] showed readings as high as 960/100ml.

These findings were immediately dismissed by Sutcliffe: "We have a more realistic view now of what we want to achieve and I am not overly worried. Some issues are dependent on storm water and unfortunately these systems were designed well before the beaches were there and the outlets now flow on to those same beaches" (DeBoer 2008).

Blue flags down

The reaction to the very high E.coli counts by those closer to the scene, including the city's project executive for coastal and catchment policy, Andrew Mather, was panic: "We are trying to find out what the problem is as quickly as possible, and then

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rehabilitate our Blue Flag programme” (Carnie 2008i). Once it was determined how difficult it would be to solve long-standing problems of inadequate maintenance, however, Sutcliffe and Macleod subsequently argued against the Blue Flag criteria on grounds of inconsistent bacterial measurements between different temperature zones. Sutcliffe also claimed (without specific evidence other than hearsay) that Blue Flag South African coordinator Allison Kelly was “involved with some oppositional groups who have their own agendas to portray our city poorly. Kelly thinks the developing world must have different standards applied to our beaches” (Christianson 2008). His attempt to have her fired from the Blue Flag programme (bragged about in Sutcliffe and Macleod 2008) was rejected by the international Blue Flag headquarters in Copenhagen, which declared her work “outstanding” (Carnie 2008k).

Writing together (or so it was advertised on the municipal website’s byline), Sutcliffe and “McLeod” (*sic*) made the following hyperbolic claims:

The recent politically-inspired and charged media statements which have surrounded the cleanliness of our beaches require comment. Instead of relying on facts and scientific results, media reports have sensationalised comments made by a self-proclaimed spokesperson Alison Kelly in which she has not only ignored pollution data and our own analyses, but interestingly, she says nothing about the fact that in Europe the so-called Blue Flag status is not as strictly enforced as in our country. Colleagues have shown me photos of Blue Flag beaches in Europe where animals freely roam and defecate on the beaches...

In the past year, only two beaches have exceeded the 2000/100 ml limit that requires immediate withdrawal of blue flag status. The other beaches show generally consistent, good quality water. The blue flag standard permits 20 percent of samples taken, to be above 100/100ml and Ph and other parameters are also within the limits set. Clearly not happy with such results Kelly now complains that she wants an independent laboratory to undertake the studies (Sutcliffe and Macleod 2008).

Yet as for the admitted problem of stormwater drainage pollution contaminating the city’s main beaches, Sutcliffe and Macleod (2008) blamed

the behaviour of formal and informal traders and street dwellers which lead to pollution of these drains. Poor water quality bacteriologically is not always as a result of a failure of the sewerage system per se but of general misuse of the system and poor behaviour in catchments. The likelihood of this being the source of many of the problems seen is supported by the fact that our water quality failures are most often as a result of high Enterococcus levels – an indication that the pollution event is removed either in time or distance from the sample.

Sutcliffe and Macleod (2008) ultimately denied that there was anything to worry about: “Our beaches are packed in spite of Ms. Kelly and others doing their best to portray us in a poor light. We will continue to work to ensure our beaches remain the cleanest and safest compared with anywhere in our country.” There was, in this vitriol, only a hint that

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the city's own infrastructure lacked the physical investment required to adequately dispose of both sewage and stormwater in ways that didn't threaten public health. The failure to retain Blue Flags designation on the six beaches was one crucial indicator of this threat, even if Sutcliffe and Macleod claimed otherwise. Later that year, Heinz de Boer (2008) reported in *The Daily News* that

the chance of local beaches ever flying another blue flag seem very remote, city manager Michael Sutcliffe said. "We are more advanced than the Blue Flag anyway because their approach has been inconsistent and not developmental in its approach. The main issue was never water quality, but the exclusion of some of the most beautiful beaches in South Africa simply because they may not have had recycling bins or other facilities available."

In early 2010, a city council meeting unanimously agreed to an opposition Democratic Alliance councilor's proposal that Durban again apply for Blue Flag status at the six beaches. This followed a substantial critique of Sutcliffe from within his own party: "Tourism Minister Marthinus van Schalkwyk and then tourism [provincial minister] Weziwe Thusi had urged the eThekweni management to reapply for the status, saying it was important as a tourism drawcard" (Padayachee 2010). But in August 2010, opposition council member Geoff Pullan (2010) wrote, pessimistically, that the city's proposed September 2010 application would not succeed: "Unfortunately, the record will show that eThekweni, which had Blue Flag beaches from 2001 to 2008, has not been able to regain its high level of seawater quality. Not being able to improve the quality of water run-off into the sea, will be the legacy that the present administration will be remembered for."

In mid-2011, Macleod's department issued a water quality report on the full 175 rivers and tributaries in the Durban metropolitan area, which found 90 of them "near natural," "good" or "fair." But instead of testing E.coli, "those involved in the programme studied the state of living organisms in the water" (SAPA 2011). It is evident from Durban's monthly website updates that there is no overall progress and that erratic measurements mar the monitoring system. Moreover, there is a race/class/geographical factor that has not been officially acknowledged but that is evident in reports of beachwater quality. Distinctions are evident between 'excellent' water quality from central Durban northwards; 'moderate' quality at the point the (mainly white) Bluff area moves southwards from largely upper-class to middle-class neighbourhoods; to 'poor' quality where black South Africans swim at Treasure Beach southwards, where the city's famed shark nets to prevent attacks are installed (<http://www.durban.gov.za/beachwater>).

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