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29/8/18 SNA

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

12TH PARLIAMENT – SECOND SESSION - 2018

*Environment
and Natural Resources*

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

Wednesday 29/08/2018

REPORT ON AN INQUIRY INTO COMPLAINTS OF ENVIRONMENTAL POLLUTION BY LONDON DISTILLERS KENYA LIMITED.

Approved




DIRECTORATE OF COMMITTEE SERVICES,
CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI.

AUGUST, 2018

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LIST OF ABBREVIATION

BOD	Biochemical Oxygen Demand
COD	Chemical Oxygen Demand
EMCA	Environmental Management and Coordination Act
EPL	Erdemann Property Limited
EPZA	Export Processing Zones Authority
LDK	London Distillers Kenya Limited
NEMA	National Environment Management Authority
PCC	Public Complaints Committee

FOREWORD

Industrial pollution is directly linked with industry, in contrast to other pollution sources. This form of pollution is one of the leading causes of pollution worldwide. Because of its size and scope, industrial pollution is a serious problem for the entire planet, especially in nations which are rapidly industrializing. This form of pollution dates back to ancient days, but widespread industrial pollution accelerated rapidly in the 1800s, with the start of the Industrial Revolution. Prominent forms of industrial pollution include water and air pollution. The two forms are equally at the centre of the inquiry at hand.

Erdemann Property Limited (EPL) is based in Nairobi and was founded in 2003. It is a limited Liability Company specializing in property development. EPL operates under the Investment Promotion Centre and was pioneered by a Chinese investor, Mr. Zeyun Yang. EPL provides decent, low-cost shelter to its clients. EPL has built more than 4,000 housing units from the year 2003 to-date.

London Distillers Kenya Limited (LDK) started its operations in the year 1986 in Athi River, Kenya in an area designated as an industrial zone. LDK was allocated its land in 1982. The company has 125 years' experience in liquor manufacturing in other parts of the world. The company has presence in other countries in the East African region as well. LDK head offices are based in Nairobi, with its distillery spread over 350 acres of land in Athi River, the premises that are the source of the complaints.

Erdemann Property Limited, as a representative of the residents and workers in Great Wall Gardens Estate which is located on Shanghai Road, Athi River, Mavoko Sub-County Machakos County, through a letter dated 22nd January, 2018 to the National Environment Management Authority (NEMA) and raised issues regarding environmental pollution through toxic fumes and effluent from London Distillers Kenya Limited which is negatively affecting the lives of the residents of the larger Athi river area.

The residents of Great Wall Garden Estate were requesting the National Environmental Management Authority (NEMA) to thoroughly investigate LDK and firmly ask them to adhere to all measures regarding to air quality and effluent discharge as stipulated in the Air and Water Quality Regulations.

Before this, NEMA through a letter dated 6th February, 2017 had written to London Distillers (K) Limited ordering a closure of the company pursuant to Environmental Management and Coordination Act (EMCA), CAP 387 Part II, Section 3. This was after the company failed to comply with three improvement orders issued to them dated 6th May, 2016, 21st July, 2016 and 8th September, 2016.

Despite the orders issued by NEMA, London Distillers Kenya Limited were yet to reduce the environmental pollution a year later, according to Erdemann Property Limited. The National Assembly, Departmental Committee on Environment and Natural Resources seized the matter after receiving a copy of the said letter by Erdemann Property Limited. The Committee then scheduled meetings with the following entities aimed at gathering evidence on the matter:

- a) Erdeman Property Limited
- b) London Distillers Kenya Limited
- c) National Environment Management Authority (NEMA)

The objective of the enquiry was to establish the extent of environmental pollution by London Distillers Kenya Limited and therefore recommend stringent measures that will ensure environmental protection, conservation and mitigation for the benefit of Kenyans.

The Committee equally wrote to the Ministry of Lands and Physical Planning and the Ministry of Environment and Forestry seeking the policy direction on issues surrounding the inquiry and touching on the mandates of the two ministries.

Having reviewed the oral and written evidence submitted to it, the Committee observed that:

1. Families, especially expectant mothers and children, could be suffering from long term health complications from the pollution. It was therefore important to deal with the matter expeditiously to eliminate the threat to lives and investments in the area.
2. A close down order was given to LDK on 6th February, 2017 due to its air pollution and releasing effluent that was not meeting set standards. However, the Distillery reopened but it was not clear whether it had met the expected conditions. There was therefore need to scrutinize the relationship between NEMA and LDK.
3. London Distillers Kenya Limited had been in existence for over 30 years in Kenya and therefore it ought to have invested in technologies that mitigate against air pollution, recycle solid waste, and escalate or institute internal self-regulation.
4. The National Environment Management Authority (NEMA) only acted after complaints were raised by EPL. The Authority needed to act proactively in order to stem environmental degradation in line with the precautionary principle in International Environmental Law.
5. NEMA licensed EPL to develop a residential property in the vicinity of LDK. NEMA knew or ought to have known about the potential conflict of such a decision.

6. Erdermann Property Limited acquired the land adjacent to the LDK fully aware that the area and its environs were zoned for industrial use. The land on which Great Wall Garden Estate by Edermann Property Limited was situated initially belonged to London Distillers but sold off to second parties by the Kenya Commercial Bank. The second users subsequently changed user status from industrial to residential use and subsequently sold to Edermann Property Limited in 2015.
7. The NEMA Director General produced before the Committee environmental audit reports largely commissioned by LDK to prove compliance of LDK with environmental standards. NEMA ought to have provided independently commissioned tests since the authenticity of results from self-initiated compliance tests would not be easy to vouch for.
8. The Report on Air Quality Measurement at London Distillers Limited was received at the Company on 24th March, 2018, days after receiving an invitation to appear before the Committee. This could imply that the report was merely done to exonerate the company from the accusations levelled against it. The report could have been a public relations exercise geared purely at hoodwinking the Committee.
9. London Distillers Limited had an agreement for sewer connection with the Export Processing Zones Authority (EPZA). However, a letter dated 14th January, 2015 indicated the polluting nature of the company, in which the introductory paragraph of the letter stated in part that: *“after rigorous analytical /quality assessment of your pre-treated effluent it is a fact that you are unable to achieve the values of COD and BOD set at 1000mg/l and 500 mg/l respectively as stipulated in the Environmental Management and Coordination (Water Quality) Regulations, 2006 of Legal Notice No.120”*. The letter went on to give conditions for connection to the EPZA sewer line which included higher charges for its effluent that did not meet set standards. The company accepted the set conditions.
10. The former Mavoko County Council allowed change of user for the parcel of land owned by EPL from industrial to residential. Such change could have led to the environmental pollution conflict between the two parties.
11. There was need for NEMA to expand the monitoring of the industrial pollution issue in Athi River to other industries in the area to ensure protection of the environment and residents of the larger Athi River area and across the country in general.
12. The Fourth Schedule of the Constitution assigns the National Government the function of developing general principles of land planning, capacity building and technical assistance

to the counties. The counties have been assigned the function of county planning and development which may include; formulating a county policy on physical planning, approving a county policy on physical planning, approving county development plans, monitoring and overseeing the planning function.

13. There was need for counties to create a master plan for land use in the area to avoid the mixed user of land which in the first place generated the environmental pollution conflict.
14. Edermann Property Limited was established in 2003 and started its development activities in Athi River in 2015, by which time London Distillers Kenya Limited was already established within the vicinity. Therefore, Edermann Property Limited engaged in its property development business in the area fully aware of its neighborhood.
15. Despite the complaints by the residents of Great Wall Gardens Estate regarding the pollution emanating from LDKL, the property development company (Edermann Property Limited) was engaged in an ambitious expansion of its housing estate in the same location.

THE HON. KAREKE MBIUKI, M.P
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND
NATURALRESOURCES.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

The Departmental Committee on Environment and Natural Resources is one of the fifteen (15) Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates, pursuant to the *Standing Order 216 (5)*, are as follows:

- a) **To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;**
- b) To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- c) To study and review all the legislation referred to it;
- d) To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
- (fa) To examine treaties, agreements and conventions;
- g) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- h) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- i) To examine any questions raised by Members on a matter within its mandate.

The subject matter of the Departmental Committee on Environment and Natural Resources are stated in the Second Schedule of the National Assembly Standing Orders No. 216 (f) as follows: climate change, environment management and conservation, forestry, water resource management, wildlife, mining and natural resources, pollution and waste management.

1.2 Oversight

In executing its mandate, the Committee oversees the following State Departments, namely:

- The Ministry of Water and Sanitation;
- The Ministry of Environment and Forestry;
- The State Department for Wildlife; and
- The State Department for Mining.

1.3 Committee Membership

The Committee on Environment and Natural Resources was constituted by the House in December, 2017 and comprises of the following Members: -

- | | |
|---|-------------------------|
| 1. The Hon. Kareke Mbiuki, M.P. | Chairperson |
| 2. The Hon. Sophia Abdi Noor, M.P. | Vice Chairperson |
| 3. The Hon. Benjamin Jomo Washiali, M.P., CBS | |
| 4. The Hon. David Kangogo Bowen, M.P. | |
| 5. The Hon. Francis Chachu Ganya, M.P. | |
| 6. The Hon. Ali Wario Guyo, M.P. | |
| 7. The Hon. Beatrice Cherono Kones, M.P. | |
| 8. The Hon. Charity Kathambi Chepkwony, M.P. | |
| 9. The Hon. Hilary Kiplang'at Kosgei, M.P. | |
| 10. The Hon. Peter Kimari Kihara, M.P. | |
| 11. The Hon. Benjamin Dalu Tayari, MP. | |
| 12. The Hon. Charles Ong'ondo Were, M.P. | |
| 13. The Hon. Nasri Sahal Ibrahim, M.P. | |
| 14. The Hon. Rossa Buyu. M.P. | |
| 15. The Hon. Said Hiribae, M.P. | |
| 16. The Hon. Hassan Oda Hulufu, M.P. | |
| 17. The Hon. Amin Deddy Mohamed Ali, M.P. | |
| 18. The Hon. Rehema Hassan, M.P. | |
| 19. The Hon. (Eng.) Paul Musyimi Nzengu, M.P. | |

Committee Secretariat

- | | |
|-----------------------------|-------------------------------------|
| 1. Ms. Esther Nginyo | - Second Clerk Assistant/Lead Clerk |
| 2. Mr. Dennis Mogare Ogechi | - Third Clerk Assistant |
| 3. Mr. Salem Lorot | - Legal Counsel II |
| 4. Ms. Winnie Kulei | - Research officer III |
| 5. Ms. Yunis Amran | - Fiscal Analyst III |

1.4 Committee Recommendations

The Committee recommends that:

1. The National Environment Management Authority (NEMA) should:
 - i. Ensure that the London Distillers Kenya Limited within six (6) months from the date of tabling of this Report, invests in state-of-art technologies that contain air pollution mitigation mechanisms, recycles solid waste, and escalates and/or institutes stringent internal self-regulation. Such technologies can include, but not limited to: physical/chemical methods and biological treatment methods of odour control.
 - ii. Expand the investigation and monitoring of the industrial pollution issue in Athi River to other industries in the area to ensure protection of the environment and residents of the larger Athi River area and the whole country in general.

- iii. Ensure due diligence in execution of its mandate to administer Environmental Impact Assessments to forestall such environmental pollution conflicts.
- iv. Review the conduct of its officers directly involved in administering Environmental Impact Assessment on the EPL's Greatwall Gardens project.
- v. Act proactively in addressing such pollution related issues in order to stem environmental degradation in line with the precautionary principle in International Environmental Law.

2. London Distillers Kenya Limited should:

- i. Within six (6) months from the date of tabling of this report, invest in state-of-art technologies that contain air pollution, recycles solid waste, and escalates and/or institutes stringent internal self-regulation. Such technologies can include, but not limited to: physical/chemical methods and biological treatment methods of odour control.
- ii. Strictly comply with the provisions of the Environmental Management and Coordination Act (No. 8 of 1999), the Environmental Management and Coordination (Water Quality) Regulations, 2006, the Environment Management and Co-Ordination (Air Quality) Regulations, 2014 and any other relevant legislation, including the obligation to keep all necessary environmental records;
- iii. Design, construct, operate and maintain structures of the highest standards that ensure safe and healthy disposal of waste.
- iv. Implement the culture of reduction, recycling and reuse of waste in daily operations such as waste utilization for energy production.
- v. Implement the best structures and use of the best technology toward cleaning of all resultant industrial by-products from its premises before release to the environment.
- vi. Implement within six months from the date of tabling of the report the procedures for assessing and reviewing the environment, health and safety policies, procedures, programmes and impact of the industry's activities.
- vii. Carry out regular and documented internal and third party audits of the progress made towards environmental protection.
- viii. Failure to implement the above recommendations, the factory should be closed and/or be relocated to other suitable areas at the owners cost.

3. Edermann Property Limited should exercise a certain degree of tolerance and co-existence as London Distillers Kenya Limited puts in place state of the art technology in environmental protection and mitigation within the period of six months as directed in this report.

4. The Ministry of Lands and Physical Planning should intensify the capacity building activities to counties and regularly monitor and evaluate progress on the extent of adherence to policies by the county governments.

5. The County Government of Machakos should;

- i. Create a master plan for land use in the Athi River area to avoid the mixed user status of land which in the first place generated the environmental pollution conflict.
 - ii. Ascertain whether due process was followed during processing and approval of the applications submitted by London Distillers Company and Great Wall Estate before their construction. If the process was not properly followed, the officers directly involved in approving the change of user status of the parcel of land occupied by the EPL's Greatwall Gardens project should be held culpable.
 - iii. Prepare a zoning plan to guide development within this area which is developing very fast. It should enforce strict adherence to the zoning plan.
6. The Ministry of Environment and Forestry should:
- i. Ensure an Environmental Audit is undertaken by a NEMA certified independent Lead Expert to confirm and recommend mitigation measures regarding complaints raised by the residents in Athi River. The audit reports should be submitted to the National Assembly within 60 days of tabling of the report.
 - ii. Ensure that a report is submitted to the National Assembly detailing progress made by NEMA and by extension London Distillers Kenya Limited in complying with the recommendations of this report within 60 days of its tabling.
 - iii. Cause closure and/or relocation of London Distillers Kenya Limited Athi River Factory within six months and at their own cost in case they fail to implement recommendations under 2 above.

2.0 BACKGROUND INFORMATION

Industrial pollution is directly linked with industry, in contrast to other pollution sources. This form of pollution is one of the leading causes of pollution worldwide. Because of its size and scope, industrial pollution is a serious problem for the entire planet, especially in nations which are rapidly industrializing. This form of pollution dates back to ancient days, but widespread industrial pollution accelerated rapidly in the 1800s, with the start of the Industrial Revolution.

The Industrial Revolution mechanized means of production, allowing for a much greater volume of production, and generating a corresponding increase in pollution. The problem was compounded by the use of fuels like coal, which is notoriously unclean, and a poor understanding of the causes and consequences of pollution.

Prominent forms of industrial pollution include water and air pollution. The two forms are equally at the centre of the inquiry at hand.

The true effects of industrial water pollution have yet to be measured. While individual toxins and pollutants have been measured and laws regulating the individual toxins and pollutants exist, the cumulative effect of the whole picture has yet to be well measured. The potential effects of industrial water pollution could grow to catastrophic levels. Not only does the potential for destruction of fish and other water dwelling creatures exist, but the potential for serious human illness also exists. Additional studies on the toxicity and hazardous waste need to be done in order to determine whether more stringent regulations are necessary in order to save the planet's natural waterways.

Manufacturing industries also release large amount of carbon monoxide, hydrocarbons, organic compounds, and chemicals into the air thereby depleting the quality of air. Such industrial air pollution had adverse effects including:

- a) Causing respiratory and heart problems,
- b) Contributing to global warming,
- c) Acid rain which refers to harmful gases like nitrogen oxides and sulfur oxides are released into the atmosphere during the burning of fossil fuels. When it rains, the water droplets combines with these air pollutants, becomes acidic and then falls on the ground in the form of acid rain. Acid rain can cause great damage to human, animals and crops,
- d) Eutrophication, a condition where high amount of nitrogen present in some pollutants gets developed on sea's surface and turns itself into algae and adversely affect fish, plants and animal species,
- e) Effect on Wildlife - Just like humans, animals also face some devastating effects of air pollution. Toxic chemicals present in the air can force wildlife species to move

to new place and change their habitat. The toxic pollutants deposit over the surface of the water and can also affect sea animals and depletion of Ozone layer

2.1 Comparative Analysis on Industrial Waste Management Policies.

a. Finland

The Finnish Waste legislation Finnish waste legislation covers all wastes except certain special types of waste such as radioactive wastes, which are covered by separate laws. The waste legislation is largely based on EU legislation, but in some cases includes stricter standards and limits than those applied in the EU as a whole. The purpose of the Waste Act is to support sustainable development by promoting the rational use of natural resources, and preventing and combating the hazard and harm to health and the environment arising from wastes. There are also assigned general duties for producers, manufactures, importers and authorities to minimise generation of waste in all activities and to ensure that waste doesn't significantly hamper or complicate the organisation of waste management, or result in hazard or harm to health or the environment.

The principle of producer responsibility is also an important instrument in Finland to minimise the generation of and to enhance recovery of certain types of wastes. The objective of the Environmental Protection Act is to:

- i. prevent the pollution of the environment and to repair and reduce damage caused by pollution, to safeguard a healthy, pleasant ecologically diverse and sustainable environment;
- ii. prevent the generation and the harmful effects of waste; to improve and integrate assessment of the impact of activities that pollute the environment;
- iii. improve citizens' opportunities to influence decisions concerning the environment; to promote sustainable use of natural resources; and
- iv. combat climate change and otherwise support sustainable development.

b. Germany

The objective of the German government's policy on waste is to achieve a recycling based economy that conserves resources and reduces adverse impacts on the environment. The aim is to increase and optimise the efficient use of raw materials, to maximise recovery quotas and to permanently remove from the environment any residual waste that can no longer be used. Waste management legislation is based on European law, German federal law, the regional laws of the federal states and the statutes of the local authority waste management services. It is also based on the precautionary principle, the polluter-pays principle and the principle of co-operation.

The main pillar is the Closed Substance Cycle and Waste Management Act makes industry and the commercial sector to be responsible for the recovery of waste, i.e. they also have to bear the

costs. The enforcement of waste legislation in Germany is mainly the task of the federal states. It is governed by requirements for waste supervision contained in the Closed Substance Cycle and Waste Management Act and supported by requirements on waste recovery and disposal records, transport licenses and specialised waste management companies.

c. United States of America

In the United States, the Environmental Protection Agency (EPA) regulates all waste material under the 1976 Resource Conservation and Recovery Act (RCRA). The RCRA includes provisions on the disposal of solid and hazardous waste materials. This legislation encourages individual states to create comprehensive plans to manage non-hazardous and municipal wastes.

2.2 Complaint Against Environmental Pollution by the London Distillers Kenya Limited.

Erdemann Property Limited was founded in 2003 and is based in Nairobi – Kenya. It is a limited Liability Company specializing in property development. EPL operates under the Investment Promotion Centre and was pioneered by a Chinese investor, Mr. Zeyun Yang. EPL provides decent, low-cost shelter to its clients. EPL has built more than 4,000 housing units from the year 2003 to-date.

London Distillers Kenya Limited started its operations in the year 1986 in Athi River, Kenya in an area designated as an industrial zone. LDK was allocated its land in 1982. The company has 125 years' experience in liquor manufacturing in other parts of the world. The company has presence in other countries in the East African region as well. LDK head offices are based in Nairobi, with its distillery spread over 350 acres of land in Athi River, the premises that are the source of the complaints.

Erdemann Property Limited, as a representative of the residents and workers in Great Wall Gardens Estate which is located on Shanghai Road, Athi River, Mavoko Sub-County Machakos County, through a letter dated 22nd January, 2018 to the National Environment Management Authority (NEMA) and raised issues regarding environmental pollution through toxic fumes and effluent from London Distillers Kenya Limited which is negatively affecting the lives of the residents of the larger Athi river area.

The residents were requesting NEMA to thoroughly investigate LDK and firmly ask them to adhere to all measures regarding air quality and effluent discharge as stipulated in the Air and Water quality regulations.

The National Environment Management Authority on a letter dated 6th February, 2017 had written to London Distillers (K) Limited ordering a closure of the company pursuant to Environmental Management and Coordination Act (EMCA), CAP 387 Part II, Section 3. This was after the

company failed to comply with three improvement orders issued to them dated 6th May, 2016, 21st July, 2016 and 8th September, 2016.

Despite the orders issued by NEMA, London Distillers Kenya Limited was yet to reduce the environmental pollution a year later, according to Erdemann Property Limited.

The National Assembly, Departmental Committee on Environment and Natural Resources seized the matter after receiving a copy of the said letter by Erdemann Property Limited.

The Committee then scheduled meetings with the following entities aimed at gathering evidence on the matter:

- a) Erderman Property Limited
- b) London Distillers Kenya Limited
- c) National Environment Management Authority (NEMA)
- d) Residents of Great Wall Gardens.

The Committee equally wrote to the Ministry of Lands and Physical Planning and the Ministry of Environment and Forestry seeking for policy direction on issues surrounding the inquiry and touching on the mandates of the two ministries.

2.3 Legal Basis

The subject matter of this inquiry is governed by the Environment Management and Co-Ordination Act, 1999 and the following regulations anchored on the Act:

- a) The Environment Management and Co-Ordination (Air Quality) Regulations, 2014

The objective of the Regulations is to provide for prevention, control and abatement of air pollution to ensure clean and healthy ambient air. It provides for the establishment of emission standards for various sources such as mobile sources (e.g. motor vehicles) and stationary sources (e.g. industries) as outlined in the Environmental Management and Coordination Act, 1999. It also covers any other air pollution source as may be determined by the Minister in consultation with NEMA. Emission limits for various areas and facilities have been set. The regulations provide the procedure for designating controlled areas, and the objectives of air quality management plans for these areas.

- b) The Environmental Management and Coordination, (Water Quality) Regulations 2016

These Regulations shall apply to drinking water, water used for industrial purposes, water used for agricultural purposes, water used for recreational purposes, water used for fisheries and wildlife, and water used for any other purposes.

2.4 Objective of the Inquiry

The Committee instituted the inquiry to:

- i. Establish the extent of environmental pollution by London Distillers Kenya Limited.
- ii. Recommend stringent measures that will ensure environmental protection, conservation and mitigation for the benefit of Kenyans.

3.0 INQUIRY INTO COMPLAINTS OF ENVIRONMENTAL POLLUTION BY LONDON DISTILLERS KENYA LIMITED.

In enquiring into the matter of Complaints of Environmental Pollution by London Distillers Kenya Limited, the Committee scheduled meetings with the following entities aimed at gathering evidence on the matter:

- a) Erdermann Property Limited
- b) London Distillers Kenya Limited
- c) National Environment Management Authority (NEMA)

The Committee equally wrote to the Ministry of Lands and Physical Planning and the Ministry of Environment and Forestry seeking the policy direction on the issues surrounding the inquiry and touching on the mandates of the two ministries.

The evidence gathered is recorded hereunder.

3.1 Submissions by Managing Director, Erdermann Property Limited, Mr. Zeyun Yang

Mr. Zeyun Yang, Managing Director Erdermann Property Limited, appeared before the Committee on Tuesday 20th March, 2018 and submitted that:

1. Erdemmann Property Limited's vision was to see a Kenya where every Kenyan is in a position to own or rent a decent house. Its mission was to provide decent and affordable housing for the low and middle income earners. The company had done 4,000 housing units in the country. The Great Wall Gardens site was surrounded by other developments projects too.
2. In the past, EPL had experienced challenges in various projects e.g. financial issues but for the Great Wall Gardens, it had experienced a unique challenge of environmental pollution. Buyers complained of the bad smell in the vicinity.
3. The User of the land EPL bought neighboring LDK was a Residential User. EPL bought the land when its title indicated it was meant for residential purpose only. The User of a parcel of land is defined by the government authorities and specifically the Ministry responsible for Lands.
4. Any claim that the area is strictly industrial does not hold any water as the place is surrounded by several homes.
5. EPL got all the requisite approvals before undertaking the development of the Great Wall Gardens Project and these could be verified by the relevant government bodies and to check any special conditions in the approvals.

6. There are over 15,000 people living in the Athi River area and who were suffering silently as they did not have an avenue to share their suffering.
7. LDK was not meeting the set standards by NEMA and instead was playing games with the authorities by releasing the gas from evening up to morning when it cannot be seen by residents of Athi River.
8. NEMA had indicated that LDK had hired a company of international repute, SGS to conduct compliance tests and revert to them.
9. LDK Pollution
 - i) Air/Gas which is also further broken down into three
 - H₂S – Dihydrogen Monosulfide - Hydrogen Sulfide
 - PH₃ – Phosphorous Trihydride - Phosphine
 - NH₃ – Nitrogen Trihydride - Ammonia
 - ii) Liquid discharge/effluent
 - EPL collected a sample from the sewer line of LDK on Sunday 18th March, 2018 that was supplied to the Committee.
 - EPL has estimated the amount of discharge from LDK over the years it has been in operation to be over 100,000 metric tonnes based on current discharge which shows a big impact to the environment.
 - The effluent discharged does not meet the standard BOD and COD requirements of waste to be discharged. The standard BOD requirement for waste is 30mg/l or below and Standard COD should be 50mg/l or below.
10. This discharge ends up in River Athi and later Tana River and affects human, animal and plant life all the way to Indian Ocean and this has been happening for over the past 30 years. The area supplied water by these two rivers is a big portion of the population of Kenya.
11. The harm caused by the pollution includes adverse effects on human, livestock, game animals, fish, water animals and plants. Effects are noted on the skin, possibility of getting cancer of the skin or respiratory issues and even death of people and animals.
12. Environmental protection is a priceless cause as the environment should be sustained for future generations. The government bodies should strike a balance between development and environmental sustainability since a destroyed environment would affect tourism which was a backbone of the Kenyan economy.

13. The prayers by Erdemann Property Limited included that:
- i) LDK puts up a proper functional treatment plant for its kind of waste.
 - ii) LDK to meet the standards set by the law and NEMA regulations.
 - iii) NEMA to ensure compliance with the law and its rules.
 - iv) LDK should invite NEMA, The Parliamentary Departmental Committee on Environment and Natural Resources and representatives of the neighbors or local leaders to show them and explain the measures they have put in place to stop or minimize the pollution.
 - v) Failure of the above should lead to a shutdown of the distillery until they comply as a permanent solution to the pollution menace brought about by LDK.

3.2 Submissions by Representatives of Residents, Great Wall Gardens

The following representatives of residents appeared before the Committee on Tuesday 20th March, 2018 and made their presentations as indicated below:

1. CPA Charles Wambugu, - Chairman of Home Owners Lecturer/ Homeowner, stated that:
 - He noted the extensive pollution in the area at the point of purchase of his housing unit but was assured by EPL that it would be resolved.
 - The smell emanating from LDK was a nuisance and disrupted sleep.
 - He had researched and learnt that emissions from a distillery could cause central nervous system breakdown, respiratory complications, and cancer.
 - He prayed that the LDK be compelled to contain the pollution to acceptable standards internationally.
2. Roselyne Kagiri, Homeowner, Great Wall Gardens, stated that:
 - She moved into Great Wall Gardens in September, 2017
 - She had a 10-year old child who she one time noted to heave in the morning as if to vomit as a result of the smell.
 - The Smell affected women, especially the expectant ones and this could lead to complications
 - There were also slum dwellers who had no voice who were suffering and needed help of the Committee for a healthier environment
 - Had to re-adjust her lifestyle - by 5p.m. the windows and doors have to be closed and up to 9a.m. the following day
 - LDK should not be allowed to continue doing wrong simply because they had been doing wrong for the past over 30 years.
3. Jesse Charagu – Lawyer/ Homeowner, stated that:
 - It was difficult to explain to the children why the smell was persistent in the morning and evening

- There was an aspect of negligence as the law of strict liability provides that if you keep anything in your compound that is likely to cause mischief to others, you have a responsibility to keep it under check (this can refer to a pet and now in this case, the smell/discharge). The law therefore presumes that you are answerable and the responsibility was squarely yours. Hence strict liability is on LDK to contain its waste
 - EMCA Act was put in the recent years but this does not exonerate one from taking responsibility.
 - The foul smell in the early morning and evening cannot allow jogging as you will experience bloated stomach in a short distance of running.
4. Joseph Ng'ang'a – Industrialist/ Homeowner, stated that:
- He runs a factory in Kariobangi and has employed about 30 staff. In Kariobangi, there are several industries but there was no such blatant pollution.
 - He was grateful to EPL for taking the lead and LDK should be tasked to either contain their waste or be shut down.
 - Fears that LDK could bribe or compromise the authorities
 - Other factories would also start blatantly polluting the environment if nothing was done to LDK.

3.3 Submissions by the National Environment Management Authority (NEMA)

The Director General, NEMA, Prof. Geoffrey Wahungu appeared before the Committee Tuesday 20th March, 2018 and informed it that:

1. London Distillers Kenya Limited (LDK) was established in 1982 on plots LR.No.12867/16, 18, and 19. & 20. This was before EMCA and NEMA was established. However, it was built in an area marked for industrial development. Its activities involve recycling of molasses into alcoholic beverages which lessens the environmental impacts of molasses as its evidenced elsewhere.
2. On 21st October 2015 Edermann Property Limited submitted an environmental impact assessment study report for issuance of EIA license for the Great Wall Gardens Estate by the Authority. It was issued with an EIA license No. NEMA/EIA/PSL/2534.
3. The Authority had since received several complaints of environmental pollution by London Distillers Kenya Limited (LDK) from proprietors of Edermann Property Limited as indicated below:
 - a) 19/4/2016: The Authority investigated allegations of environmental pollution by London Distillers Kenya Limited and noted that:
 - The facility was connected to the EPZA sewer line;
 - There had been cases of vandalism of metallic joints from their feeder sewer line before discharge to the EPZA main sewer on 19/4/2016.

- b) 6/5/2016: The Authority issued an improvement order to the facility advising them to:
- secure their feeder sewer line to avoid vandalism;
 - rehabilitate sites affected by discharge from the vandalism activities;
 - Submit effluent analysis report for the pretreated waste water.
- c) 21/7/2016: The Authority issued another improvement order to the facility directing them to:
- Submit the effluent analytical report of the pre-treated waste water;
 - Submit stack emission measurement report, fast-track commissioning of the clarifier for their waste water pre-treatment plant;
 - Ensure all waste water is pretreated before discharge into the environment or the EPZA sewer line.
- d) 29/7/2016: London Distillers Kenya Limited (LDK) submitted responses to the above improvement orders.
- e) 8/9/2016: The Authority advised the proponent to:
- i) cease operations whenever feeder sewer line malfunctioned i.e. it is in-operational;
 - ii) submit stack emission measurements for boilers;
 - iii) Indicate measures they intended to institute to comply with the Effluent Discharge Licence limits.
- f) 8/9/2016: The Authority requested the proponent to submit stack emission measurements for their boilers;
- g) 26/10/2016: London Distillers Kenya Limited submitted their stack emission report to the Authority.
- h) 8/12/2016: The Authority received complaints of environmental pollution by London Distillers Kenya Limited (LDK) from Edermann Property Limited.
- i) 21/1/2017: The Authority requested the proponent to submit Emission Compliance Plan for the facility.
- j) 6/2/2017: The Authority issued closure order to London Distillers Kenya Limited (LDK) after failing to fully comply with the improvement orders issued earlier.

- k) 28/2/2017: Environmental Inspectors inspected the facility to confirm compliance with the closure order and recommended that all effluent discharges be through the waste water treatment plant.
- l) 13/3/2017: The Authority lifted the closure after observing that the facility management had:
 - i) Repaired the sections of the vandalised sewer line;
 - ii) Submitted effluent analytical report;
 - iii) Submitted stack emission measurement report;
 - iv) Installed a clarifier at the effluent treatment plant to enhance its operations
 - v) Contracted a NEMA licensed transporter for their waste.
- m) 20/3/2017: London Distillers Kenya Limited (LDK) confirmed receipt of the letter lifting the closure order.
- n) 22/1/2018: The Authority received complaints of air pollution by London Distillers Kenya Limited from Erdermann Property Limited who are adjacent neighbours.
- o) 31/1/2018: The Authority received a response from London distillers on allegations of their environmental pollution by Erdermann property Limited. London Distillers Kenya Limited reported that the Erdermann Property Limited constructed houses on industrial plots LR.No.12867/9-13 &17 which are adjacent to it - an industrial enterprise.
- p) 8/2/2018: The Authority advised London Distillers Kenya Limited (LDK) to submit:
 - i) stack emission reports;
 - ii) Ambient air quality measurements within the facility along the waste water reticulation system as well as along the boundary lines between 5 am and 9 am in the morning and after 6 pm in the evening.
 - iii) An emission Compliance Plan for the fugitive emissions within the premises.
 - iv) Apply for the stack emission license within Twenty-one (21) days from the date of that letter.
- q) 9/2/2018: Environmental Inspectors inspected the London Distillers Kenya Limited and reported no cases of non-compliance to environmental requirements.
- r) 5/3/2018: London Distillers Kenya Limited submitted their preliminary stack emission measurement report awaiting the final one in 21 days.

- s) 19/3/2018: The Authority received an invitation from Parliamentary Committee on Environment to provide brief on London Distillers Kenya Limited.
4. As per the Air Quality Regulations, 2014, facilities located within industrial areas are expected to persevere with the recommended ambient air quality standards for industrial areas and vice versa for industries intending to operate within residential areas in order to co-exist.
 5. In the case of London Distillers Kenya Limited, other neighbours include Mavuno Church about 300meters and other upcoming 5 residential estates.

3.3 Submissions by the Ministry of Lands

The Committee wrote a letter Ref: No. NA/DCS/ENR/2018 (024) dated 11th April, 2018 to the Ministry of Lands request for information on the the policy on change of user, the interface between the ministry and the county government in the implementation of the policy, possible solutions to the issues raised and policy directions and best practices to be applied for similar cases across the country. In its response, the ministry submitted as follows, that;

1. On the policy for change of user, it was defined as a development application involving any alteration in the use, purpose or level of activity within any land, space or building that involves material change which does not conform to the existing plans and policies. The basis for approval of development applications including change of user is an approved development plan, zoning plan and policies and regulations contained therein;
2. The Physical Planning Act, 286 Section 31 on development application states that any person requiring development permission shall make an application in the form prescribed in the Fourth Schedule, to the planning authority responsible for the area in which the land concerned is situated. It further provides that such application shall be accompanied by such plans and particulars as are necessary to indicate the purposes of the development, and in particular shall show the proposed use and density;
3. The procedure for change of user comprises of: pre-application which involves consultation with a registered and practicing Physical Planner; Submission of duly filled development application to the respective County Government planning department; Consideration of the submitted application for approval after circulation by the planning authority to various departments for sectoral comments/opinions; decision making based on the submitted comments and communication of the decision to the applicant within 30 days of the decision being made. The process has an appeal mechanism if the applicant is not satisfied by the decision of the approving authority through respective physical planning liaison committee;
4. On the interface between the Ministry and County Governments on the development control process, development Control as a Physical Planning function by the National

Government was devolved to the County Governments. Under Article 186(2) and (3) of the Constitution and the 4th schedule sections (21) and (32), the National Government is mandated to among others; Provide general principles of land planning and co-ordination of planning by counties including guidelines on Development Control and offer capacity building and technical assistance to the counties. However, the day to day development control activities including change of user are undertaken by county governments from inception to approval;

5. On the findings on The London Distillers Company and Great Wall Estate matter, the two were located off Mombasa road just after the interchange to Namanga. The area was outside the approved development Plan for Mavoko Town. However from the ministry's records, the LR.NO.12867 seemed to have been planned through a subdivision of the mother title, in this case the approved plan was the basis for guiding developments within these parcels. From records parcels LR.NO.s 12867 /1-30 seemed to have been amalgamated then subdivided and a Change of User done. Plots allocated for industrial use included LR.NOs 12867/9-20 and LR.NOs 12867/20-30 were allocated for residential use.
6. The ministry therefore recommended as follows, that:
 - i. Further interrogation of the matter through Machakos County Government is required to ascertain whether due process was followed during processing and approval of the applications leading to London Distillers Company and Great Wall Estate.
 - ii. The Physical Planning Act provides for applications which are likely to cause pollution such as industrial to seek approval from NEMA through environmental impact assessment reports, it is therefore important to find whether this applied to London Distillers Company
 - iii. An Environmental Audit should be undertaken by a NEMA certified Lead Expert to confirm and recommend mitigation measures regarding complains raised by the applicants
 - iv. A zoning plan should be prepared by the Machakos County Government to guide development within this are which is developing very fast.

3.4 Submissions by the Managing Director, London Distillers Kenya Limited, Mr. Alvin Galot

The Managing Director, London Distillers Kenya Limited, Mr. Alvin Galot, appeared before the Committee on Tuesday 27th March, 2018 and informed it that:

1. London Distillers Kenya Limited (LDK) was aware of a complaint levelled against it by Erdermann Property Limited dated 22nd January, 2018.

2. LDK was not a polluter of the environment. The activities carried out by LDK in its premises were not environmentally harmful to its own staff, some of whom reside within the factory premises, nor did its activities affect other neighbours or workers as alleged by the Great wall Garden Estate workers.
3. LDK regularly submits itself to the compliance measures established by the National Environment Management Authority (NEMA).
4. Erdemann Properties Limited had not established an evidence based case against LDK save for wild allegations and arrogating to itself the role NEMA.
5. Erdemann Properties Limited made unfounded allegations against NEMA and LDK, acted in bad faith and was not honest in their complaint. This was demonstrated by copying their letter dated 5th February 2018, to the Presidency, the Cabinet Secretary for Environment and Natural resources, the Governor of Machakos, the Clerk to the National Assembly as well a total of 22 other players including the media.
6. LDK was a responsible corporate citizen which pays its taxes, employs Kenyans and through them, benefits their families. LDK was the only company in Kenya that has a robust climate change policy, embraces green energy through solar equipment and biogas plant. It has regenerated the environment through tree planting and proper waste management processes.
7. London Distillers Kenya Limited started its operations in the year 1986 in Athi River in an area designated as industrial zone, long before Erdemann Properties Limited, Hillcrest Park, the Kraal among other recent arrivals like Mavuno Church, Everest Park Estate, Safaricom Staff Pension Scheme, City Carton residents, and Jam City Estate Residents. It is located in premises zoned off for industrial and ancillary purposes as per the title documents which also apply to the surrounding premises.
8. LDK was allocated its land in 1982 but doesn't not know when Edermann Properties gained access to the land they occupy and whether they ever subjected themselves to change of user from industrial to housing. Subsequent subdivision of land in this area had yielded into an untidy semblance of mixture of land use including industrial, residential and agricultural.
9. LDK had endured complaints from similar actors in the past. On 16th of January, 2006 and 3rd of February 2006 E.H.S Resource Centre filed a complaint with the Public Complaints Committee (PCC) on the Environment under PCC Recommendation No: 115/2006.
10. One of the findings and recommendations of the PCC no 115/2006 was that Mavoko Municipal Council as it was then known should cease, in the absence of a Master Development Plan, granting individual change of user permits in areas where there is likely to be conflict where such permits are granted.

11. The Export Processing Zones authority has a sewer line to which industries connect upon payment of a fee and observance of certain standards. The EPZA then directs the effluent in their sewer line to their final treatment plant before final discharge into the environment.
12. On 6th February, 2017, the National Environment Management Authority issued a closure Order for LDK because as they said, they had received numerous complaints from the public about environmental pollution. The letter referred to ground inspections carried out on 6th May of 2016, 21st July, 2016 and 8th September, 2016. The letter alleged that LDK had failed to comply with the orders.
13. The NEMA letter of closure failed to disclose the fact that LDK responded on May 19th to the issues raised in the May 6th 2016 inspection vide letter Ref LDK/AD/584/16 received at the NEMA County offices on 24th May 2016 with the promise of compliance and a copy of third party analysis report from SGS and gave a programme for continuing improvement of the management of the effluent discharge.
14. The NEMA closure letter failed to disclose the fact that LDK had responded to their inspection report of 6th July 2016 vide their letter dated 27th July, 2016, in which LDK appended copies of the latest quarterly third party analysis reports from SGS, internal effluent analysis records, licensed garbage/waste handlers and a work plan to addressing issues raised in the improvement order.
15. In responding to the closure order, LDK pointed out the fact that as a result of their earlier letters and actions, the NEMA inspectors who visited on 28th of February 2017, had noted that that LDK had complied with all the improvement orders issued. LDK confirmed that all the improvements procedures were in place to effect the orders. They appealed against the closure through their heir letter dated March 7, 2017 and referenced LDK/MG/184/17.
16. On March 13th 2017, NEMA wrote a letter lifting the closure order for LDK in which they confirmed that the organization had undertaken the following: 1) Repaired sections of the damaged sewer line, 2) Submitted effluent analysis Report to NEMA, 3) Submitted Stack emission analysis report to NEMA, 4) had installed clarifiers at the effluent treatment plant and lastly, 5) contracted a NEMA approved/licensed waste transporter – Kinca Trading Company to collect and discharge waste water that had leaked/spilled from the sewer system.
17. NEMA then made additional recommendations on: 1) Installation of sludge drying beds to manage the environmental impacts of sludge, 2) Ensuring no spillage at entry points of the sewer system and all illegal discharges of waste water are controlled, 3) Submission of Quarterly effluent analysis report for the pre-treated waste water before discharge to the sewer line, and lastly, 5) Strict adherence to Environmental Management Plan (EMP) and periodic consultations with environmental experts and full implementation of the Audit reports.
18. On 20th March 2017 in response to the lifting of the closure order, LDK confirmed that the management team was in the process of implementing the recommendations and

keeping track of appropriate checklists. This letter also attached a work-plan to implement the proposed recommendations.

19. LDK was making serious investments in environmental conservation including tree planting. Over ten thousand trees had been planted to green the area.
20. LDK had invested over USD 1,205, 432.81 in the solar energy in a bid to manage carbon emissions.
21. LDK had as of 7th December 2016 concluded an agreement with PRAJ Industries Limited to upgrade technology, design, engineering and supply of equipment worth USD 1,250,000.
22. He concluded that Industries world over emit effluent which, if not treated, can be harmful. LDK was aware of this and continued to work with the regulator to ensure that its activities were not harmful to the environment.

3.5 Inspection Visit to Edermann Property Limited (Great Wall Gardens Estate).

The Committee conducted an inspection visit to Edermann Property Limited (Great Wall Gardens Estate) on 3rd May, 2018. During the inspection visit, the Committee met with the management and residents of Edermann Property Limited (Great Wall Gardens Estate). In a meeting, after a tour of the estate, the following were highlighted:

1. The management complained of a bad odour coming from the London Distillers Kenya Limited (Athi River Plant) which had forced them to move their reporting time to work for the workers in the estate from 7am to 8am.
2. The offensive odour had been limited on the inspection day and 3 days prior to the visit.
3. Initially the odour was not strong but it had increased in intensity over time. Edermann Property Limited management had made efforts to visit the distillery in 2015 and were informed that they were installing systems to clear the smell.
4. The residents feared for their health and hoped that the company could control their waste to avoid pollution and hence health related issues.
5. The residents informed the Committee that they were not informed that the distillery was not effectively managing its waste before they purchased their houses in the estate.

At the end of the visit, the Committee Members observed that despite the complaints by the residents of Great Wall Gardens Estate regarding the pollution emanating from LDKL, the company (Edermann Property Limited) was engaged in an ambitious expansion of its housing estate in the same location.

3.6 Inspection Visit to London Distillers Limited (Athi River Plant).

The Committee conducted an inspection visit to London Distillers Limited (Athi River Plant) on 3rd May, 2018. The visit was done in two phases on the material day. First, the Committee visited the vicinity of London Distillers Limited (Athi River Plant) at 4.30 am to ascertain the veracity of the allegations of early morning odour in the vicinity of the plant and later made a tour of the plant and held a meeting with the company's management at 10 am.

The areas in the plant that were visited included:

- (i) The Distillery
- (ii) The Production Line
- (iii) The Molasses Tanks
- (iv) The Waste Analysis Laboratory
- (v) The Biogas Plant
- (vi) The Effluent Treatment Plant

At the end of the visit, the Committee members observed that:

1. The Molasses Tanks and the Biogas Plant were located just next to the wall separating the plant from the Great Wall Gardens Estate, the probable source of the odour that the residents were complaining about.
2. There was a strong stench emanating from the Biogas Plant and the Effluent Treatment Plant (ETP) which needed urgent measures to curb.
3. The LDK needed to come up with an improvement plan and a technology to contain the offensive odour emanating from its operations and waste.
4. There were many other housing estates in the vicinity other than the Great Wall Gardens Estate.
5. The Committee lacked the technical knowhow to test samples at various points in the plant. However, the samples were collected.

3.7 Submission from the Governor, Machakos County

The Committee paid a courtesy visit to the Machakos Governor, H.E Alfred Mutua, on 3rd May, 2018 with respect to the allegations of pollution by LDK Limited. The governor informed it that:

1. There were many industries in Athi River area, London Distillers Kenya Limited being one of them.

2. The distillery had been shut down following a court order but was later reopened under unclear circumstances. Attempts to implement the Court Order by the Machakos County Government were thwarted by NEMA. Hitherto, NEMA had been reluctant to act to implement the court orders.
3. The County Government of Machakos was concerned with the high pollution levels which were causing the Ukambani region to have the highest cancer levels in the country due to pollution of Athi and Nairobi Rivers.
4. The Committee could help county governments by engaging NEMA and instituting measures to reduce pollution by industries and stamping their authority.
5. The Machakos County Government was planning a rezoning exercise especially along Mombasa road to curb such environmental conflicts between residents and industries.

At the end of the visit it was resolved that the Machakos County Government would prepare and submit to the Committee a report on the matter of pollution by the London Distillers Kenya Limited within one month.

4.0 COMMITTEE OBSERVATIONS

Having reviewed the oral and written evidence submitted to it, the Committee observed that:

1. Families, especially expectant mothers and children, could be suffering from long term health complications from the pollution. It was therefore important to deal with the matter expeditiously to eliminate the threat to lives and investments in the area.
2. A close down order was given to LDK on 6th February, 2017 due to its air pollution and releasing effluent that was not meeting set standards. However, the Distillery reopened but it was not clear whether it had met the expected conditions. There was therefore need to scrutinize the relationship between NEMA and LDK.
3. London Distillers Kenya Limited had been in existence for over 30 years in Kenya and therefore it ought to have invested in technologies that mitigate against air pollution, recycle solid waste, and escalate or institute internal self-regulation.
4. The National Environment Management Authority (NEMA) only acted after complaints were raised by EPL. The Authority needed to act proactively in order to stem environmental degradation in line with the precautionary principle in International Environmental Law.
5. NEMA licensed EPL to develop a residential property in the vicinity of LDK. NEMA knew or ought to have known about the potential conflict of such a decision.
6. Erdemann Property Limited acquired the land adjacent to the LDK fully aware that the area and its environs were zoned for industrial use. The land on which Great Wall Garden Estate by Erdemann Property Limited was situated initially belonged to London Distillers but sold off to second parties by the Kenya Commercial Bank. The second users subsequently changed user status from industrial to residential use and subsequently sold to Erdemann Property Limited in 2015.
7. The NEMA Director General produced before the Committee environmental audit reports largely commissioned by LDK to prove compliance of LDK with environmental standards. NEMA ought to have provided independently commissioned tests since the authenticity of results from self-initiated compliance tests would not be easy to vouch for.
8. The Report on Air Quality Measurement at London Distillers Limited was received at the Company on 24th March, 2018, days after receiving an invitation to appear before the Committee. This could imply that the report was merely done to exonerate the company from the accusations levelled against it. The report could have been a public relations exercise geared purely at hoodwinking the Committee.
9. London Distillers Limited had an agreement for sewer connection with the Export Processing Zones Authority (EPZA). However, a letter dated 14th January, 2015 indicated the polluting nature of the company, in which the introductory paragraph of the letter stated in part that: *“after rigorous analytical /quality assessment of your pre-treated effluent it is a fact that you are unable to achieve the values of COD and BOD set at 1000mg/l and 500 mg/l respectively as stipulated in the Environmental Management and Coordination (Water Quality) Regulations, 2006 of Legal Notice No.120”*. The letter went on to give conditions for connection to the EPZA sewer line which included higher charges for its effluent that did not meet set standards. The company accepted the set conditions.

10. The former Mavoko County Council allowed change of user for the parcel of land owned by EPL from industrial to residential. Such change could have led to the environmental pollution conflict between the two parties.
11. There was need for NEMA to expand the monitoring of the industrial pollution issue in Athi River to other industries in the area to ensure protection of the environment and residents of the larger Athi River area and across the country in general.
12. The Fourth Schedule of the Constitution assigns the National Government the function of developing general principles of land planning, capacity building and technical assistance to the counties. The counties have been assigned the function of county planning and development which may include; formulating a county policy on physical planning, approving a county policy on physical planning, approving county development plans, monitoring and overseeing the planning function.
13. There was need for counties to create a master plan for land use in the area to avoid the mixed user of land which in the first place generated the environmental pollution conflict.
14. Edermann Property Limited was established in 2003 and started its development activities in Athi River in 2015, by which time London Distillers Kenya Limited was already established within the vicinity. Therefore, Edermann Property Limited engaged in its property development business in the area fully aware of its neighbourhood.
15. Despite the complaints by the residents of Great Wall Gardens Estate regarding the pollution emanating from LDKL, the property development company (Edermann Property Limited) was engaged in an ambitious expansion of its housing estate in the same location.

5.0 COMMITTEE RECOMMENDATIONS

The Committee recommends that:

1. The National Environment Management Authority (NEMA) should:

- i. Ensure that the London Distillers Kenya Limited within six (6) months from the date of tabling of this Report, invests in state-of-art technologies that contain air pollution mitigation mechanisms, recycles solid waste, and escalates and/or institutes stringent internal self-regulation. Such technologies can include, but not limited to: physical/chemical methods and biological treatment methods of odour control.
- ii. Expand the investigation and monitoring of the industrial pollution issue in Athi River to other industries in the area to ensure protection of the environment and residents of the larger Athi River area and the whole country in general.
- iii. Ensure due diligence in execution of its mandate to administer Environmental Impact Assessments to forestall such environmental pollution conflicts.
- iv. Review the conduct of its officers directly involved in administering Environmental Impact Assessment on the EPL's Greatwall Gardens project.
- v. Act proactively in addressing such pollution related issues in order to stem environmental degradation in line with the precautionary principle in International Environmental Law.

2. London Distillers Kenya Limited should:

- i. Within six (6) months from the date of tabling of this report, invest in state-of-art technologies that contain air pollution, recycles solid waste, and escalates and/or institutes stringent internal self-regulation. Such technologies can include, but not limited to: physical/chemical methods and biological treatment methods of odour control.
- ii. Strictly comply with the provisions of the Environmental Management and Coordination Act (No. 8 of 1999), the Environmental Management and Coordination (Water Quality) Regulations, 2006, the Environment Management and Co-Ordination (Air Quality) Regulations, 2014 and any other relevant legislation, including the obligation to keep all necessary environmental records;
- iii. Design, construct, operate and maintain structures of the highest standards that ensure safe and healthy disposal of waste.
- iv. Implement the culture of reduction, recycling and reuse of waste in daily operations such as waste utilization for energy production.
- v. Implement the best structures and use of the best technology toward cleaning of all resultant industrial by-products from its premises before release to the environment.

- vi. Implement within six months from the date of tabling of the report the procedures for assessing and reviewing the environment, health and safety policies, procedures, programmes and impact of the industry's activities.
 - vii. Carry out regular and documented internal and third party audits of the progress made towards environmental protection.
 - viii. Failure to implement the above recommendations, the factory should be closed and/or be relocated to other suitable areas at the owners cost.
3. Edermann Property Limited should exercise a certain degree of tolerance and co-existence as London Distillers Kenya Limited puts in place state of the art technology in environmental protection and mitigation within the period of six months as directed in this report.
 4. The Ministry of Lands and Physical Planning should intensify the capacity building activities to counties and regularly monitor and evaluate progress on the extent of adherence to policies by the county governments.
 5. The County Government of Machakos should;
 - i. Create a master plan for land use in the Athi River area to avoid the mixed user status of land which in the first place generated the environmental pollution conflict.
 - ii. Ascertain whether due process was followed during processing and approval of the applications submitted by London Distillers Company and Great Wall Estate before their construction. If the process was not properly followed, the officers directly involved in approving the change of user status of the parcel of land occupied by the EPL's Greatwall Gardens project should be held culpable.
 - iii. Prepare a zoning plan to guide development within this area which is developing very fast. It should enforce strict adherence to the zoning plan.
 6. The Ministry of Environment and Forestry should:
 - i. Ensure an Environmental Audit is undertaken by a NEMA certified independent Lead Expert to confirm and recommend mitigation measures regarding complaints raised by the residents in Athi River. The audit reports should be submitted to the National Assembly within 60 days of tabling of the report.
 - ii. Ensure that a report is submitted to the National Assembly detailing progress made by NEMA and by extension London Distillers Kenya Limited in complying with the recommendations of this report within **60 days** of its tabling.
 - iii. Cause closure and/or relocation of London Distillers Kenya Limited Athi River Factory within six months and at their own cost in case they fail to implement recommendations under 2 above.