



**REFERENCE:** 14/1/1/E1/9/2/3/0474/18

**ENQUIRIES:** Grant Dyers

**BY EMAIL**

Mr GP Kotze

Email: [kotzegp@iway.na](mailto:kotzegp@iway.na)

Posbus 41

Okhahandja

Namibia

**DIRECTIVE**

Dear Sir

**DIRECTIVE IN TERMS OF SECTION 28(4) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998**

1. The Department's Pre-Directive dated 27 June 2018, your rehabilitation plan dated 31 October 2018 and the correspondence received from the Department of Water and Sanitation (DWS) dated 18 February 2019, has reference.
2. Having considered your representations, rehabilitation plan and the evidence before me, I, Achmad Bassier, in my capacity as Director: Environmental Law Enforcement (this Directorate), hereby issue Mr GP Kotze as the owner of Farm Zanddrift 138, Portions 2 and 3, Piketberg, with a Directive in terms of section

28(4) of the NEMA, for the significant degradation of the environment which is occurring on the aforesaid property.

3. This Directive relates to non-compliance with section 28(1) of the NEMA.

### **Details of conduct constituting non-compliance**

4. During an investigation into allegations of degradation of the environment, a site inspection at Farm Zanddrift 138, Portions 2 and 3, Piketberg, was conducted by Environmental Management Inspectors from this Directorate on 21 February 2018 and 5 September 2018 and it was confirmed that an instream dam had been constructed on the above-mentioned property, which has caused significant degradation of the environment.



Aerial map: Location of alleged illegal activity and coordinates (32° 52'48.21" S, 18° 35'8.16" E)



Photograph 1: A portion of dam-wall comprising of clay and tyres



Photograph 2: Area where in-stream dam-wall was removed.



Photograph 3: Area where erosion adjacent to the dam wall had occurred.

5. Section 28(1) of the NEMA provides that every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.
6. The provisions contained in section 28(5) of the NEMA were considered when determining the measures and timeframes included in this Directive.

**7. You are hereby directed to:**

- 7.1. Commence with the remedial measures as set out in the rehabilitation plan (the plan), dated 31 October 2018, **within 21(twenty-one) calendar days** of receipt of this Directive, with the following conditions:

- 7.1.1. Appoint an environmental control officer (ECO) to oversee and management the implementation of the plan and the decommissioning of the remaining portions of the dam wall;
  - 7.1.2. The DWS must be consulted with regards to the decommissioning of the dam wall and the decommissioning must be in-line with the requirements of the DWS;
  - 7.1.3. The river embankments must be restored to its original condition, or as close as possible to its most natural condition; and
  - 7.1.4. In order to prevent large amounts of silt moving downstream, precautionary measures should be taken during the removal of the remaining portions of the dam wall.
- 7.2. The above rehabilitation process must be completed **by 31 July 2019**.
  - 7.3. Submit an audit report **within 21(twenty-one) calendar days** from the date of completion of the rehabilitation process to the Department.

### **Offences and penalties, including failure to comply with this Directive**

8. In terms of section 49A(1)(e) of the NEMA it is an offence to unlawfully and intentionally or negligently commit any act or omission which causes significant pollution and/or degradation of the environment or is likely to cause significant pollution and/or degradation of the environment.
9. According to section 49A(1)(f) of the NEMA it is an offence to unlawfully and intentionally or negligently commit any act or omission detrimentally affects or is likely to detrimentally affect the environment.
10. A person convicted of the above offences is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

11. Furthermore, in terms of section 49A(1)(g) of the NEMA failure to comply with a Directive is an offence. A person convicted of failing to comply with a Directive is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

12. Furthermore, in terms of section 28(7) of the NEMA, if you fail to comply or inadequately comply with this Directive, the Provincial Head of Department may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.

13. In terms of section 28(8) of the NEMA, the Provincial Head of Department may recover costs for reasonable remedial measures undertaken to remedy the situation from, amongst others, you.

### **Appeal against this Directive**

14. You may appeal against the decision to issue this Directive to the Minister of Local Government, Environmental Affairs and Development Planning ("the Minister") within **30 (thirty) calendar days** from the date of receipt of this Directive.

15. The appeal must be in writing on the form obtainable from the Appeal Administrator, Mr Jaap de Villiers, at the contact details below and must be accompanied by a statement detailing the grounds for the appeal and supporting documentation, if any.

By post: Western Cape Ministry of Local Government, Environmental  
Affairs and Development Planning  
Private Bag X9186  
CAPE TOWN

8000

By facsimile: (021) 483 4174

By hand: Attention: Jaap de Villiers (Tel: 021 483 3721)  
Room 809  
8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

By email: [Jaap.DeVilliers@westerncape.gov.za](mailto:Jaap.DeVilliers@westerncape.gov.za)

16. For purposes of electronic database management, you are requested to submit an electronic copy (Microsoft Word format) of the appeal form and any supporting documents.
17. The appeal form as well as assistance regarding the appeal procedure is obtainable from the Appeals Administrator.
18. Kindly note, this Directorate will be conducting compliance inspections during the rehabilitation process in order to ensure compliance with the plan and this Directive.



**Achmad Bassier**

**Director: Environmental Law Enforcement**

**Grade 1 Environmental Management Inspector**

**Date: 18 | 04 | 2019**

CC: (1) Abraar Mowzer      DWS      Email: [MowzerA@dws.gov.za](mailto:MowzerA@dws.gov.za)  
(2) Stimela Thanduxolo      DWS      Email: [StimelaT@dws.gov.za](mailto:StimelaT@dws.gov.za)  
(3) Mentoer Dumani      DWS      Email: [MentoerD@dws.gov.za](mailto:MentoerD@dws.gov.za)  
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