



**REFERENCE:** 14/1/1/E3/8/2/3/L909/17

**ENQUIRIES:** D Mouton

**BY EMAIL**

Mrs Marita Muller  
Farm Vermaaklikheid 499/20  
Riversdale  
6671

Email: [Maritamuller@mweb.co.za](mailto:Maritamuller@mweb.co.za)

## **COMPLIANCE NOTICE**

Dear Madam

**COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 107 OF 1998**

1. The Department's Pre-Compliance Notice dated 30 October 2017, the Department's letter dated 30 August 2018 and the updated section 24G application Project Schedule (PS) received on 28 February 2019 (attached hereto as an annexure), has reference.
2. I, Achmad Bassier, in my capacity as an Environmental Management Inspector Grade 1, hereby issues Mrs Marita Muller with a Compliance Notice in terms of section 31L of the National Environmental Management Act, 1998 (NEMA).

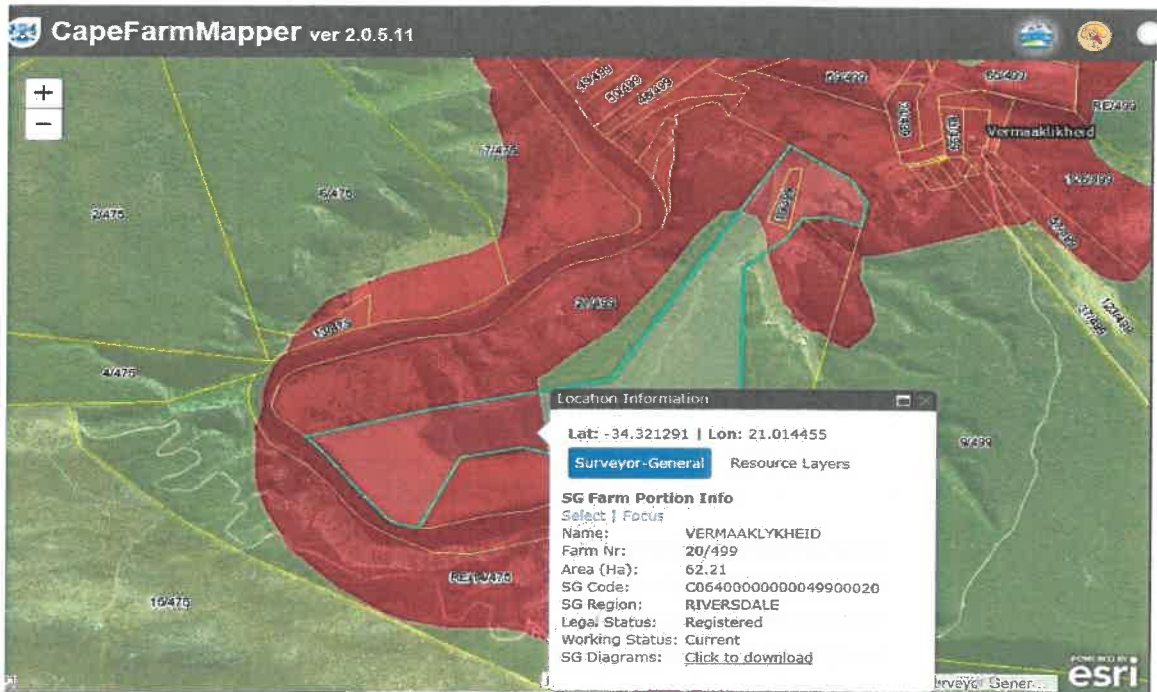
3. This Compliance Notice relates to non-compliance with the provisions of section 24F of the NEMA. No activity listed in the Environmental Impact Assessment (EIA) Regulations Listing Notice 1 and 3 of 2014 may commence without environmental authorisation from the competent authority.

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

4. During an investigation into allegations of the commencement of a listed activity in contravention of section 24F of the NEMA a site inspection was conducted at Farm Vermaaklikheid No. 499/20 by Environmental Management Inspectors from the Department's Directorate: Environmental Law Enforcement (this Directorate) and accompanied by Mr Henri Charles (general worker of your property) on 19 September 2017 and it was confirmed that you have commenced with the alleged unlawful construction of infrastructure larger than 10m<sup>2</sup> on the riverbank of the Duiwenhoks River Estuary on Eastern Ruens Shale Renosterveld (a critical endangered ecosystem type) within 32 metres from the watercourse / river and within the estuarine functional zone of the estuary without environmental authorisation.
5. However, based on the evidence received pertaining to this matter, it was determined that some of the listed activities may not have been listed. However, the expansion of the structure still triggered certain listed activities which was outlined in the Department's letter dated 30 August 2018 and thus referred to in the paragraphs below.



Aerial map 1: Location of alleged illegal activity.



Aerial Map 2: Indication of Eastern Ruens Shale Renosterveld (a critical endangered ecosystem type) (red areas) on Farm Vermaaklikheid 499 Portion 20, Riversdale.

6. On considering the evidence before me there are reasonable grounds to believe that you have commenced the following activities without environmental authorisation:

EIA Regulations Listing Notice 1 of 2014:

Activity no. 19A:

**The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from—**

(i) the seashore;

(ii) **the littoral active zone, an estuary or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater; or**

(iii) the sea; —

but excluding where such infilling, depositing, dredging, excavation, removal or moving—

(a) will occur behind a development setback;

(b) is for maintenance purposes undertaken in accordance with a maintenance management plan;

(c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;

(d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or

where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies

EIA Regulations Listing Notice 3 of 2014:

Activity no. 23:

The expansion of—

(i) dams or weirs where the dam or weir is expanded by 10 square metres or more; or

**(ii) infrastructure or structures where the physical footprint is expanded by 10 square metres or more;**

where such expansion occurs—

(a) within a watercourse;

(b) in front of a development setback adopted in the prescribed manner; or

**(c) if no development setback has been adopted, within 32 metres of a watercourse, measured from the edge of a watercourse;**

excluding the expansion of infrastructure or structures within existing ports or harbours that will not increase the development

**(i) Western Cape**

**i. Outside urban areas:**

(aa) A protected area identified in terms of NEMPAA, excluding conservancies;

(bb) National Protected Area Expansion Strategy Focus areas;

(cc) World Heritage Sites;

(dd) Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent authority;

(ee) Sites or areas listed in terms of an international convention;

(ff) Critical biodiversity areas or ecosystem service areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;

(gg) Core areas in biosphere reserves; or



- (hh) **Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined.**



Photo 1: Development of a structure (braai facility) with a physical footprint of more than 10m<sup>2</sup> within 32 metres from the edge of the watercourse.



Photo 2:

View of the structure next to the Duiwenhoks River estuary with existing floating jetty in die background.

7. **In light of the fact that you have decided to apply for the rectification of the unlawful commencement of a listed activity in terms of section 24G of the NEMA and have submitted a section 24G PS, you are hereby instructed to:**

Directorate: Environmental Law Enforcement  
4th Floor, York Park Building, York Street, George, 6530  
tel: +27 044 8058625 fax: +27 044 8746431

Diana.Mouton@westerncape.gov.za  
Private Bag X6509, George, 6530  
www.westerncape.gov.za/eadp

- 7.1 Immediately cease the above listed activities;
  - 7.2 Adhere to the section 24G PS and specified timeframes dated 28 February 2019 (attached hereto); and
  - 7.3 Inform the Department of any delays/changes in respect of the section 24G PS on the following details; Ms Zaidah Toefy (Head of Sub-Directorate: Rectification) email: [zaidah.toefy@westerncape.gov.za](mailto:zaidah.toefy@westerncape.gov.za) **and** Ms Diana Mouton (Directorate: Environmental Law Enforcement) email: [diana.mouton@westerncape.gov.za](mailto:diana.mouton@westerncape.gov.za)
8. Approval of the section 24G application PS by the Department does not remedy the unlawful commencement of the above activities which remain unlawful in terms of section 49A(1) (a) and/or (d) of the NEMA, until such time that environmental authorisation is granted.
  9. Notwithstanding the section 24G application, the Department may commence criminal proceedings should circumstances so require.

### **Varying this Compliance Notice**

10. If you would like me to vary this Compliance Notice or extend the period to which it relates, you may make representations to me, in writing, to do so.

### **Failure to comply with this Compliance Notice (section 31N of the NEMA) and related offences in terms of the NEMA**

11. In terms of section 49A(1)(a) of the NEMA it is an offence to commence a listed activity without environmental authorisation. A person convicted of such an offence 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.

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12. Furthermore, failure to comply with a Compliance Notice is an offence in terms of section 49A(1)(k). A person convicted of such an offence is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both instances to both such fine and such imprisonment.
13. Any non-compliance with the Compliance Notice must be reported to the Minister, who may:
  - 13.1 revoke any permit or authorisation to which this Compliance Notice relates; and/or
  - 13.2 take any steps necessary to ensure compliance with the provisions of the law, permit or authorisation to which this Compliance Notice relates and recover from you the cost of doing so.

**Procedure for lodging an objection to this Compliance Notice (section 31L and 31M of the NEMA)**

14. If you wish to lodge an objection to this Compliance Notice, you may do so by making representations, in writing, to the Provincial Minister of Environmental Affairs and Development Planning ("the Minister") within 30 days of receipt of this Compliance Notice.
15. You may also make representations, in writing, to the Minister to suspend the operation of this Compliance Notice pending finalisation of the objection.
16. The objection must be in writing and forwarded to the Appeal Administrator, Mr Jaap de Villiers at the contact details below and must be accompanied by a statement detailing the grounds of the objection and supporting documentation, if any.



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Private Bag X6509, George, 6530  
[www.westerncape.gov.za/eadp](http://www.westerncape.gov.za/eadp)

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: Mr 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)

17. Irrespective of any representations you may make to me or to the Minister, you must comply with this Compliance Notice within the time period stated in the Compliance Notice, unless the Minister agrees to suspend the operation of this Compliance Notice.



**Achmad Bassier**

**Director: Environmental Law Enforcement**

**Grade 1 Environmental Management Inspector**

**Date: 17/05/2019**

Cc:

- 1.) Mr A West (Environmental Consultancy) Email: [andrewwest@isat.co.za](mailto:andrewwest@isat.co.za)
- 2.) Ms Zaidah Toefy (SD: Rectification – DEA&DP) Email: [Zaidah.Toefy@westerncape.gov.za](mailto:Zaidah.Toefy@westerncape.gov.za)

## S24G APPLICATION SCHEDULE REVISED

ACTIONS	PARTY CONCERNED / RECIPIENT	PROJECTED DATE
<p>Obtain certified copy of the Identity Document of the Applicant together with a certified copy of the Title Deed</p> <p>The above, together with the formal appointment by the client of the Environmental Assessment Practitioner (EAP).</p>	<p>The Applicant ito of the S24G EIR process</p>	<p>Completed 31/01/2019</p>
<p>Commence with completing of the NEMA S24G Application Checklist with respect to:</p> <ul style="list-style-type: none"> <li>- Correct locality map</li> <li>- Site and layout plan</li> <li>- Colour photos</li> <li>- Biodiversity overlay as part of the already completed Specialist Botanical Assessment</li> </ul>	<p>EAP and Specialist Botanist</p>	<p>14/02/2019</p> <p>Complete: 14/03/2019</p>

<p>Advertise the Listed Activity in the local newspaper according to NEMA S24G Regulations</p> <p>Placing of Site Notice Board, correctly, on the property concerned</p>	<p>EAP together with Applicant advise</p>	<p>21/03/2019</p> <p>21/03/2019</p>
<p>Notification sent by registered mail to all applicable neighbouring property owners</p> <p>Notification sent to all the Relevant Government Departments, Organs of State and other commenting Authorities and any other Stakeholders</p>	<p>EAP</p>	<p>21/03/2019</p> <p>21/03/2019</p>
<p>Complete the NEMA S24G Checklist</p> <p>Submit above to S24G Directorate: Environmental Governance: DEADP, Cape Town</p> <p>Feedback received from above.</p>	<p>EAP with possible assistance from the Specialist Botanist</p> <p>EAP</p> <p>Assigned official case officer</p>	<p>28/04/2019</p> <p>07/05/2019</p> <p>08/06/2019</p>
<p>Compile the Draft Environmental Impact Report (EIR)</p> <p>Circulate above to all Relevant Gov Departments, Organs of State and any Registered I&amp;AP's in the public participation process</p> <p>Statutory commenting period 30 days</p>	<p>EAP</p> <p>EAP</p> <p>EAP and assigned Case officer</p>	<p>15/06/2019</p> <p>22/06/2019</p> <p>22/07/2019</p>
<p>Submit Formal NEMA S24G Application with Draft EIR (incl. comments received) to DEADP, Cape Town</p> <p>Comment from DEADP</p> <p>Any additional information and action required from the EAP</p> <p>Submission of <b>Final EIR</b> to S24G, DEADP</p>	<p>EAP / Case officer</p> <p>Case officer</p> <p>EAP / Specialist</p> <p>EAP</p>	<p>24/07/2019</p> <p>24/09/2019</p> <p>14/10/2019</p> <p>31/10/2019</p>