



**REFERENCE:** 14/1/1/E3/6/2/3/L916/17

**ENQUIRIES:** D Mouton

**BY EMAIL**

Mr J van der Vyfer

Email: [johanvdv@hilbert.co.za](mailto:johanvdv@hilbert.co.za)

PO Box 85

Ladismith

6655

## COMPLIANCE NOTICE

Dear Sir

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

1. The Department's Pre-Compliance Notice dated 16 February 2018, the meeting held with you and officials from the Department's Directorate: Environmental Law Enforcement ("this Directorate") on 10 April 2018, the representation received from your appointed Environmental Assessment Practitioner (EAP), Ms Desiree du Preez, dated 25 April 2018 and the email dated 24 July 2018 from this Directorate to Ms du Preez requesting a

timeframe / time schedule regarding the progress of the S24G application process, has reference.

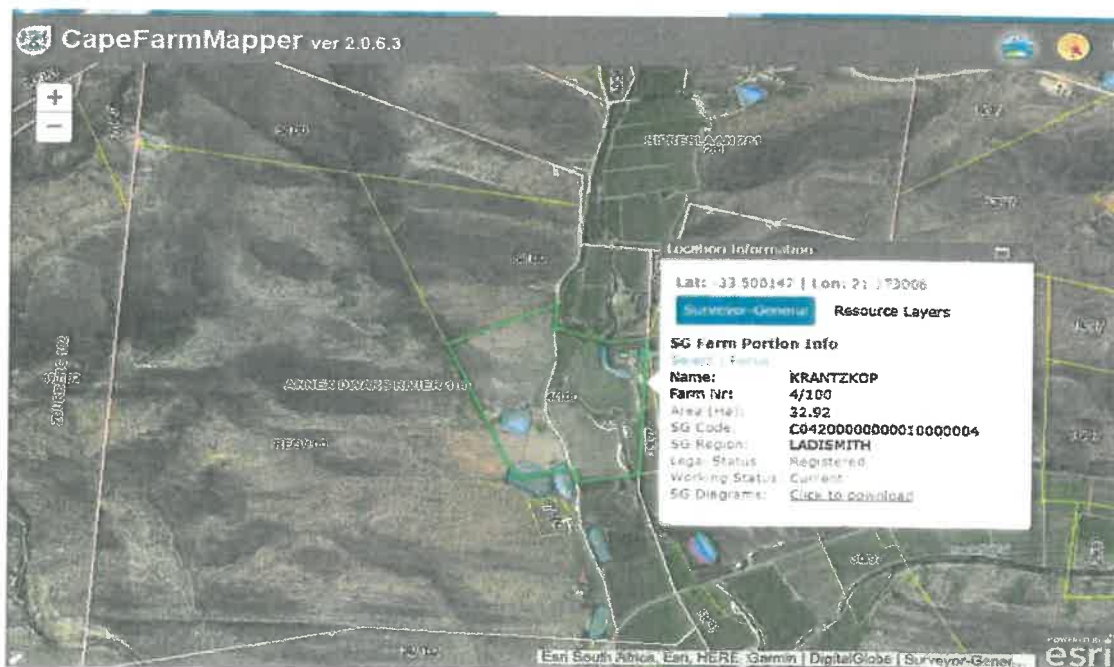
2. I, Achmad Bassier, in my capacity as an Environmental Management Inspector Grade 1, hereby issues Mr Johan van der Vyfer with a Compliance Notice in terms of section 31L of the National Environmental Management Act, 1998 ("NEMA").
3. This Compliance Notice relates to non-compliance with the provisions of section 24F of the NEMA. No activity listed in the Environmental Impact Assessment ("EIA") Regulations Listing Notice 1 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 Buffelskloof 14/97, Farm Buffelskloof 16/97 and Farm Krantzkop 4/100 ("the properties") by an Environmental Management Inspector from this Directorate together with officials from the Breede Gouritz Catchment Management Area (BGCMA) and Department of Water Affairs on 28 November 2017 and it was confirmed that you have commenced with the expansion and or development of off-stream storage dams, in-stream dams within a watercourse, expansion of dam walls without the requisite environmental authorisation.
5. This Directorate has subsequently received information that you are continuing with the use of the unlawful infrastructure (storage of water within these dams) on the said properties.



Map 1: Location of alleged illegal expansion of dams on Farm Buffelskloof 14/97 and 16/97, Ladismith.



Map 2: Location of alleged illegal expansion of a dam on Farm Krantzkop 4/100, Ladismith.

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 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

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

EIA Regulations Listing Notice 1 of 2014

Activity no. 12:

*The development of—*

- (i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or*
- (ii) infrastructure or structures with a physical footprint of 100 square metres or more;*

*where such development occurs—*

- (a) within a watercourse;*
- (b) in front of a development setback; or*
- (c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse*

Activity no. 48:

*The expansion of—*

- (i) infrastructure or structures where the physical footprint is expanded by 100 square metres or more; or*
- (ii) dams or weirs, where the dam or weir, including infrastructure and water surface area, is expanded by 100 square metres or more;*

*where such expansion occurs—*

- (a) within a watercourse;*
- (b) in front of a development setback; or*

(c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse



Photo 1: Development and or expansion of a dam on Farm Krantzkop 4/100, Ladismith exceeding 100 square metres within 32 metres of a watercourse (Dwars River).





Photo 2: Development of a dam on Farm Krantzkop 4/100, Ladismith exceeding 100 square metres within 32 metres of a watercourse (Dwars River).

Activity no. 50:

*The expansion of facilities or infrastructure for the off-stream storage of water, including dams and reservoirs, where the combined capacity will be increased by 50 000 cubic metres or more.*



Photo 3: Expansion of a dam on Farm Buffelskloof 14/97, Ladismith. Combined capacity of all the dams expanded believed to be more than 50 000 cubic metres.



Photo 4: Expansion of a dam on Farm Buffelskloof 16/97, Ladismith. Combined capacity of all the dams expanded believed to be more than 50 000 cubic metres.

Activity no. 66:

*The expansion of a dam where—*

- (i) the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, was originally 5 metres or higher and where the height of the wall is increased by 2,5 metres or more; or*

*where the high-water mark of the dam will be increased with 10 hectares or more.*



Photo 5: Height of dam wall increased by 2.5 metres or more on Farm Buffelskloof 14/97, Ladismith.

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

- 7.1 Immediately cease the above listed activities;
  - 7.2 submit to the Department within **30 (thirty) calendar days** of receipt of this Compliance Notice a project plan with adequate timeframes outlining the process for the submission of a section 24G application compiled by a suitably qualified and experienced independent environmental assessment practitioner.
8. Approval of the project plan 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.
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.
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.

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:** 30/11/2018

**Cc:**

Desiree du Preez (EAP) [desdup@telkomsa.net](mailto:desdup@telkomsa.net)

Fabion Smith (BGCMA) [fsmith@bgcma.co.za](mailto:fsmith@bgcma.co.za)

Zaidah Toefy (DEA&DP – S-D: Rectification) ([zaidah.toefy@westerncape.gov.za](mailto:zaidah.toefy@westerncape.gov.za))

