



**REFERENCE:** 14/1/1/E3/6/2/3/L930/18

**ENQUIRIES:** D Mouton

**BY EMAIL**

Mrs Erika Calitz

PO Box 94

Calitzdorp

6660

Email: [erikabitzker@gmail.com](mailto:erikabitzker@gmail.com)

## COMPLIANCE NOTICE

Dear Madam

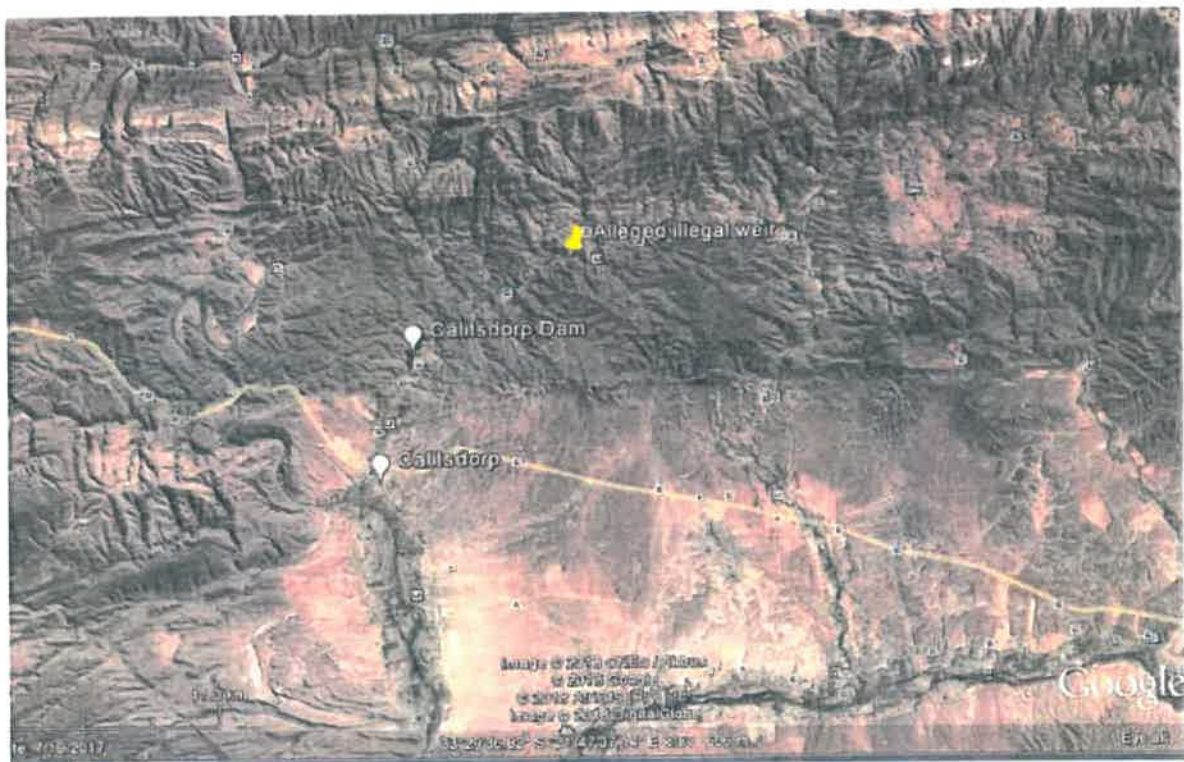
### COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998

1. The Department's Pre-Compliance Notice issued on 27 February 2018, your attorney's representation on your behalf dated 18 April 2018 and this Directorate's electronic response addressed to your appointed attorney dated 18 April 2018 has reference.
2. Having considered the representation and all the evidence before me, I, Dr Eshaam Palmer, in my capacity as an Environmental Management Inspector Grade 1, hereby issue to Mrs Erika Calitz 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 Living Waters No 104/7, Callitzdorp by an Environmental Management Inspector from the Department's Directorate: Environmental Law Enforcement with officials from the Breede Gouritz Catchment Management Area on 29 January 2018 and it was confirmed that you have commenced with the development of a weir within the Nels River without environmental authorisation.



**Aerial map: Location of alleged illegal development of a weir within the Nels River.**

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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/ealp](http://www.westerncape.gov.za/ealp)

5. On considering the evidence before me there are reasonable grounds to believe that you have commenced the following activity 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; 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*



Photo 1: Development of a weir with the watercourse (Nels Rivier, Calitzdorp).



Photo 2: Close up of the concrete weir and old weir (stones & material) in background within the watercourse (Nels River, Calitzdorp).

6. The Department wishes to advise that on 4 December 2014, the Minister of Environmental Affairs promulgated the 2014 EIA Regulations. These Regulations came into effect on 8 December 2014 and was amended on 7 April 2017. Accordingly, activities which commenced prior to 7 April 2017 and which are similarly listed in the 2014 Regulations require prior environmental authorisation.

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

7.1 Immediately cease the above listed activity;

7.2 Submit to the Department within **30 (thirty) calendar days** of receipt of this Compliance Notice a plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:

7.2.1 assessment and evaluation of the impact on the environment;

7.2.2 identification of proposed remedial and/or mitigation measures;  
and

- 7.2.3 provide information / proof of all developments of infrastructure / weirs that have been constructed and or re-constructed within the Nels River on your relevant properties.
8. Approval of the plan by the Department does not remedy the unlawful commencement of the above activity, which remain unlawful in terms of section 49A(1) (a) and/or (d) of the NEMA.
9. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.
10. If you wish to continue with the listed activity you may apply for environmental authorisation by way of a section 24G application. However, such application does not constitute permission to continue with the listed activity, which remains unlawful unless environmental authorisation is granted.
11. Notwithstanding the section 24G application, the Department may commence criminal proceedings should circumstances so require.

### **Varying this Compliance Notice**

12. 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**

13. 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.

14. 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.

15. Any non-compliance with the Compliance Notice must be reported to the Minister, who may:

- 15.1 revoke any permit or authorisation to which this Compliance Notice relates; and/or
- 15.2 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)**

16. 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.

17. You may also make representations, in writing, to the Minister to suspend the operation of this Compliance Notice pending finalisation of the objection.

18. 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)

19. 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.



**Dr E Palmer**

**Director: Environmental Law Enforcement**

**Grade 1 Environmental Management Inspector**

**Date:** 18/5/2018

Cc:

Zama Mbunquka

[zmbunquka@bacma.co.za](mailto:zmbunquka@bacma.co.za)

Coetzee & van der Berg Attorneys [charmaine@coebergh.co.za](mailto:charmaine@coebergh.co.za)

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