



REFERENCE: G14/1/1/E3/6/9/3/L842/16/VOL1

ENQUIRIES: Ms N Ndlumbini

Chairman

Buffels vlei Irrigation Board

Calitzdorp

Attention: Mr Leon Oosthuizen

BY EMAIL

Cell: 082 855 6367

Email: wegwaai@xsinet.co.za

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 21 September 2016 and the representations from Barry & Mouton attorneys on your behalf dated 07 November 2016 and the Rehabilitation plan from Mr Jan Vlok of Regalis Environmental Services cc on your behalf dated 08 December 2016, has reference.
2. Having considered your representations and all the evidence in this matter, I, Dr Eshaam Palmer, in my capacity as an Environmental Management Inspector Grade 1, hereby issues Mr Leon Oosthuizen representing Buffels Vlei Irrigation Board 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 Notice¹ 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 St Helena Farm Quarrie veldt 106, Calitzdorp by Environmental Management Inspectors from the Department's Directorate: Environmental Compliance and Enforcement on 04 August 2016 and a follow-up site inspection dated 18 May 2017, it was confirmed that you have commenced with the unlawful moving of material, constructing a road and vegetation clearing within the watercourse, which is the existing channel and Gamka River without the requisite environmental authorisation.
5. During a compliance monitoring inspection dated 09 November 2017 and 26 March 2018, it was confirmed that none of the rehabilitation measures were successfully implemented as the area lacks rain, the water channel and the Gamka River has enough water, which could be of useful to irrigate the planted material in order to restore the affected area to its original state.
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.

GPS Coordinates: S33° 33'31, 82" E 21° 39'23, 53



Aerial map: Location of alleged illegal activity.

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

Impact Assessment Regulations Listing Notice 1 of 2017:

Activity no. 19:

The infilling or depositing of any material of more than 10 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) a watercourse;*
- (ii) the seashore; or*
- (iii) 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—*

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; or*

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

Impact Assessment Regulations Listing Notice 3 of 2017:

Activity no. 4:

The development of a road wider than 4 metres with a reserve less than 13,5 metres.

(f) In Western Cape:

- i. Areas outside urban areas;
 - (aa) Areas containing indigenous vegetation;
 - (bb) Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined; or
- ii. In urban areas:
 - (cc) Areas zoned for conservation use; or
 - (dd) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority.

Activity no.12:

The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.

- (a) Western Cape provinces:
 - i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;
 - ii. Within critical biodiversity areas identified in bioregional plans;
 - iii. Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such

removal will occur behind the development setback line on erven in urban areas; or

- iv. *On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning.*



Photo 1: clearing of vegetation and road construction.

8. You are hereby instructed to:

- 8.1 Immediately cease the above listed activities;
- 8.2 submit to the Department within **30 (thirty) calendar days** of receipt of this Compliance Notice an audit impact report and a rehabilitation plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:
- 8.3 assessment and evaluation of the impact on the environment; and
identification of proposed remedial and/or mitigation measures.

9. Approval of the report and 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.
10. If the above report and plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.
11. 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.
12. Notwithstanding the section 24G application, the Department may commence criminal proceedings should circumstances so require.

Varying this Compliance Notice

13. 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

14. 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.
15. 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.

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

- 16.1 revoke any permit or authorisation to which this Compliance Notice relates; and/or
- 16.2 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)

17. 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.

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

19. 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

20. 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: 23/4/2018