



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

DIRECTIVE

Dear Sir

DIRECTIVE IN TERMS OF SECTION 28(4) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 107 OF 1998

1. The Department's Pre-Compliance Notice issued on 21 September 2016, the written 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 the evidence before me, I, Dr Eshaam Palmer, in my capacity as Director: Environmental Law Enforcement, hereby issue Mr Leon Oosthuizen of the Buffels vlei Irrigation Board with a Directive in terms

of section 28(4) of the NEMA, as you are causing significant pollution and/or degradation of the environment.

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 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 Law Enforcement on 04 August 2016 and a follow-up site inspection on 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 which could cause significant environmental degradation.
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 into original state.

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



Aerial map 1: Location of the alleged illegal vegetation clearing and a road construction.



Photo 1: View of the clearing of vegetation and road construction.

6. 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.
7. The provisions contained in section 28(5) of the NEMA were considered when determining the measures and timeframes included in this Directive.

8. You are hereby directed to:

- 8.1 immediately cease the activities described in paragraph 4 and 5 above, which are causing the above pollution and/or degradation;
- 8.2 submit to the Department for approval, **within 30 (thirty) calendar days** of receipt of this Directive, confirmation of the audit impact report and a rehabilitation plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:
 - 8.2.1 assessment and evaluation of the impact of the pollution and/or degradation; and
 - 8.2.2 identification of proposed remedial and/or mitigation measures.
9. If the above report and a plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.

Offences and penalties, including failure to comply with this Directive

10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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

16. 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.

17. 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

18. 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.

19. The appeal form as well as assistance regarding the appeal procedure is obtainable from the Appeals Administrator.



Dr E Palmer

Director: Environmental Law Enforcement

Date: 23/4/2018

