



REFERENCE: 14/1/1/E1/10/8/3/0462/17
ENQUIRIES: Fundiswa Zingitwa-Lwana

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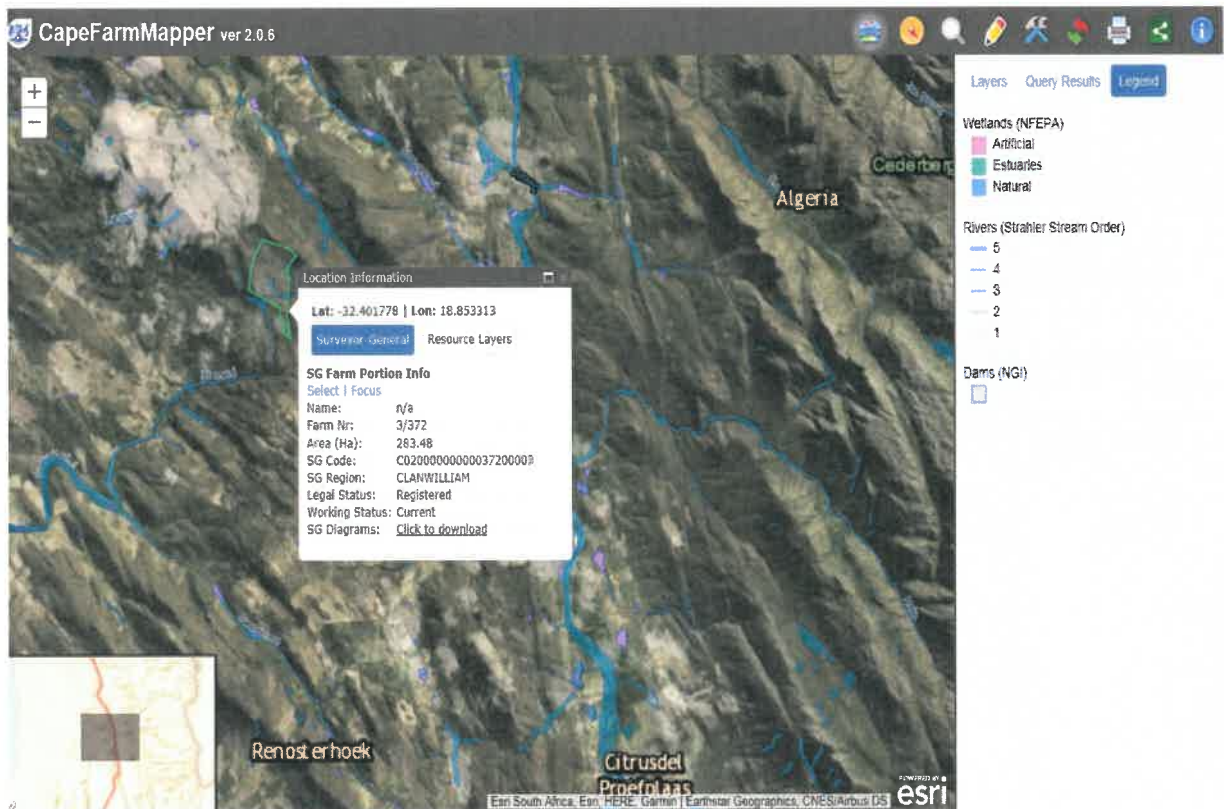
PRE-COMPLIANCE NOTICE

Dear Sir

**INTENTION TO ISSUE A COMPLIANCE NOTICE IN TERMS OF SECTION 31L
OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998**

1. During an investigation into allegations of the commencement of a listed activity in contravention of section 24F of the National Environmental Management Act, 1998 ("NEMA"), a site inspection was conducted at Portion

3 of Farm Wildschutskraal 13372 by Environmental Management Inspectors from the Department's Directorate: Environmental Law Enforcement on 1 November 2017 and it was confirmed that you have commenced with the construction of three (3) dams, without environmental authorisation.



Aerial map: Location of alleged illegal activities.

2. In terms of section 24F of the NEMA, no activity listed in the Environmental Impact Assessment ("EIA") Regulations Listing Notice 1, 2 and 3 of 2014 may commence without environmental authorisation from the competent authority.
3. On considering the evidence before me, there are reasonable grounds to believe that you have commenced the following listed activities without environmental authorisation:

EIA Regulations Listing Notice 1 of 2014:

Activity 12

The development of—

- (i) canals exceeding 100 square metres in size;
- (ii) channels exceeding 100 square metres in size;
- (iii) bridges exceeding 100 square metres in size;
- (iv) **dams, where the dam, including infrastructure and water surface area, exceeds 100 square metres in size;**
- (v) weirs, where the weir, including infrastructure and water surface area, exceeds 100 square metres in size;
- (vi) bulk storm water outlet structures exceeding 100 square metres in size;
- (vii) marinas exceeding 100 square metres in size;
- (viii) jetties exceeding 100 square metres in size;
- (ix) slipways exceeding 100 square metres in size;
- (x) buildings exceeding 100 square metres in size;
- (xi) boardwalks exceeding 100 square metres in size; or
- (xii) 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; —

excluding—

- (aa) the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;
- (bb) where such development activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;

- (cc) activities listed in activity 14 in Listing Notice 2 of 2014 or activity 14 in Listing Notice 3 of 2014, in which case that activity applies;
- (dd) where such development occurs within an urban area; or
- (ee) where such development occurs within existing roads or road reserves.

Activity no. 13:

The development of facilities or infrastructure for the off-stream storage of water, including dams and reservoirs, with a combined capacity of 50 000 cubic metres or more, unless such storage falls within the ambit of activity 16 in Listing Notice 2 of 2014;

EIA Regulations Listing Notice 2 of 2014:

Activity no. 16:

The development of a dam where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher or where the high-water mark of the dam covers an area of 10 hectares or more.

EIA Regulations Listing Notice 3 of 2014:

Activity 14

The development of—

- (i) canals exceeding 10 square metres in size;
- (ii) channels exceeding 10 square metres in size;
- (iii) bridges exceeding 10 square metres in size;

- (iv) **dams, where the dam, including infrastructure and water surface area exceeds 10 square metres in size;**
- (v) weirs, where the weir, including infrastructure and water surface area exceeds 10 square metres in size;
- (vi) bulk storm water outlet structures exceeding 10 square metres in size;
- (vii) marinas exceeding 10 square metres in size;
- (viii) jetties exceeding 10 square metres in size;
- (ix) slipways exceeding 10 square metres in size;
- (x) buildings exceeding 10 square metres in size;
- (xi) boardwalks exceeding 10 square metres in size; or
- (xii) infrastructure or structures with a physical footprint of 10 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 has been adopted, within 32 metres of a watercourse, measured from the edge of a watercourse;

excluding the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour.

- (a) In Western Cape:
 - i. **Outside urban areas, in:**

- (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.*
4. 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.

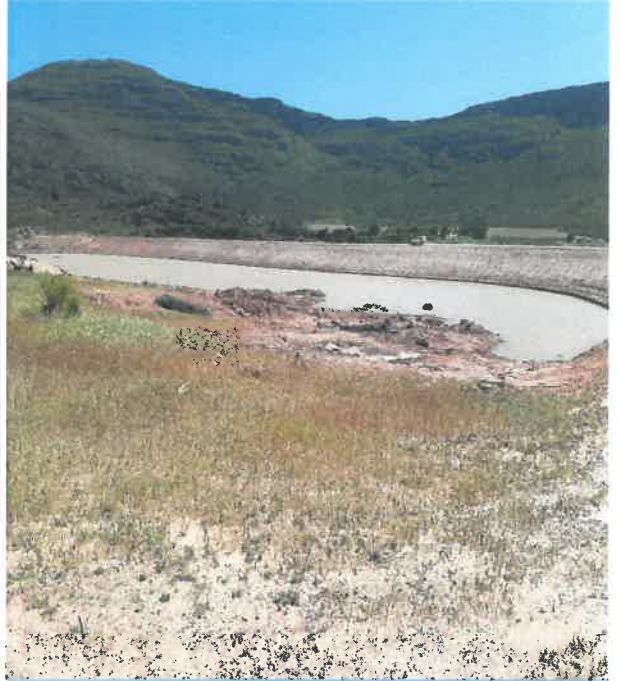




Photo1-6: Development of three dams without environmental authorisation

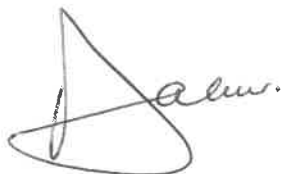
5. In terms of section 49A of the NEMA it is an offence to commence a listed activity without environmental authorisation. A person convicted of such an offence is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

6. As such, you are hereby given notice of the Department's intention to issue you with a Compliance Notice in terms of section 31L of the NEMA, which will instruct you to:
 - 6.1 immediately cease the above listed activities;
 - 6.2 investigate, assess and evaluate the impact that the listed activity has / has had on the environment;
 - 6.3 rehabilitate the site to its original condition; and
 - 6.4 carry out any other measure necessary to rectify the effects of the unlawful activity.

7. Furthermore, failure to comply with a Compliance Notice is an offence in terms of section 49A(1)(k). A person convicted of failing to comply with a

Compliance Notice is liable to a maximum fine of R5 million or 5 years imprisonment or both such fine and such imprisonment.

8. You are afforded a period of **21 (twenty-one) calendar days** from the date of receipt of this Pre-Compliance Notice to make written representations to the Department as to why a Compliance Notice should not be issued.
9. If you inform the Department, in respect of paragraph 8 above that you intend to rectify the non-compliance, you must cease the above listed activities and submit to the Department for approval, **within 60 (sixty) calendar days** of receipt of this Pre-Compliance Notice, a report and a plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following
 - 9.1 assessment and evaluation of the impact on the environment; and
 - 9.2 identification of proposed remedial and/or mitigation measures.
10. If the above report is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.
11. Approval of the above report by the Department does not remedy the unlawful commencement of the above activity, which remains unlawful in terms of section 49A(1) (a) and/or (d) of the NEMA.



Dr E Palmer

Director: Environmental Law Enforcement

Grade 1 Environmental Management Inspector

Date: 18/12/2017

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