



**REFERENCE:** 14/1/1/E3/10/2/3/L1134/20  
**ENQUIRIES:** Raheem Dalwai

**BY EMAIL**

Mr. Viljee Keller

Email: [viljeekeller@mweb.co.za](mailto:viljeekeller@mweb.co.za)

PO Box 1458

Oudtshoorn

6620

Attention: Mr. Viljee Keller

## **COMPLIANCE NOTICE**

Dear Sir

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

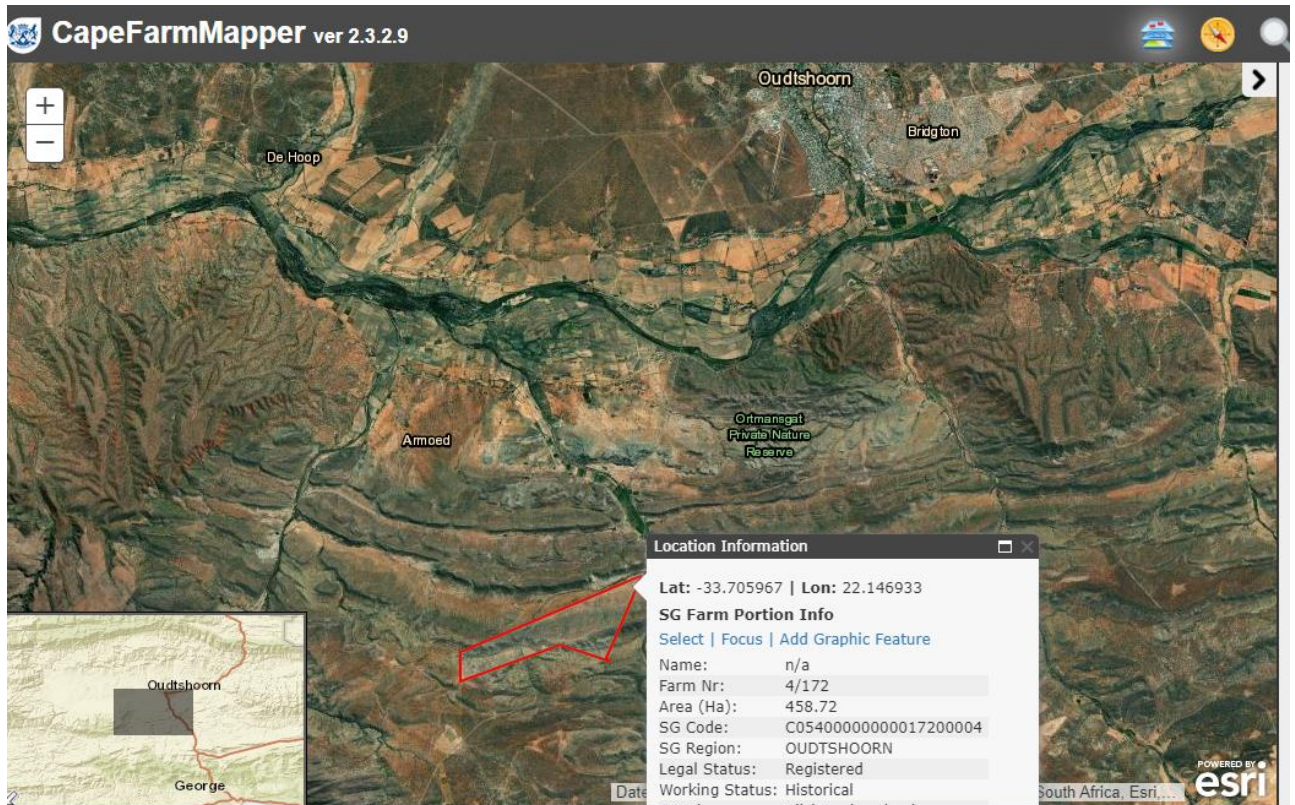
1. The Department's Pre-Compliance Notice dated 30 October 2020, and the representation received from your appointed Environmental Assessment

Practitioner (EAP), Cape EAPrac, dated 17 December 2020 with the section 24G application Project Schedule (PS), has reference.

2. I, Achmad Bassier, in my capacity as an Environmental Management Inspector Grade 1, hereby issues Mr. Viljee Keller 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 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 portion 4 of farm 172, Kellershoogte by an Environmental Management Inspector from the Department's Directorate: Environmental Law Enforcement on 08 September 2020 and it was confirmed that you have commenced with the clearance of indigenous vegetation, and the infilling of material within a watercourse, without environmental authorisation.



Map 1: Location of alleged unlawful activity.

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

#### **EIA Regulations Listing Notice 1 of 2014:**

##### **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 10 cubic metres from a watercourse;***

*but excluding where such infilling, depositing, dredging, excavation, removal or moving—*

- (a) will occur behind a development setback;*

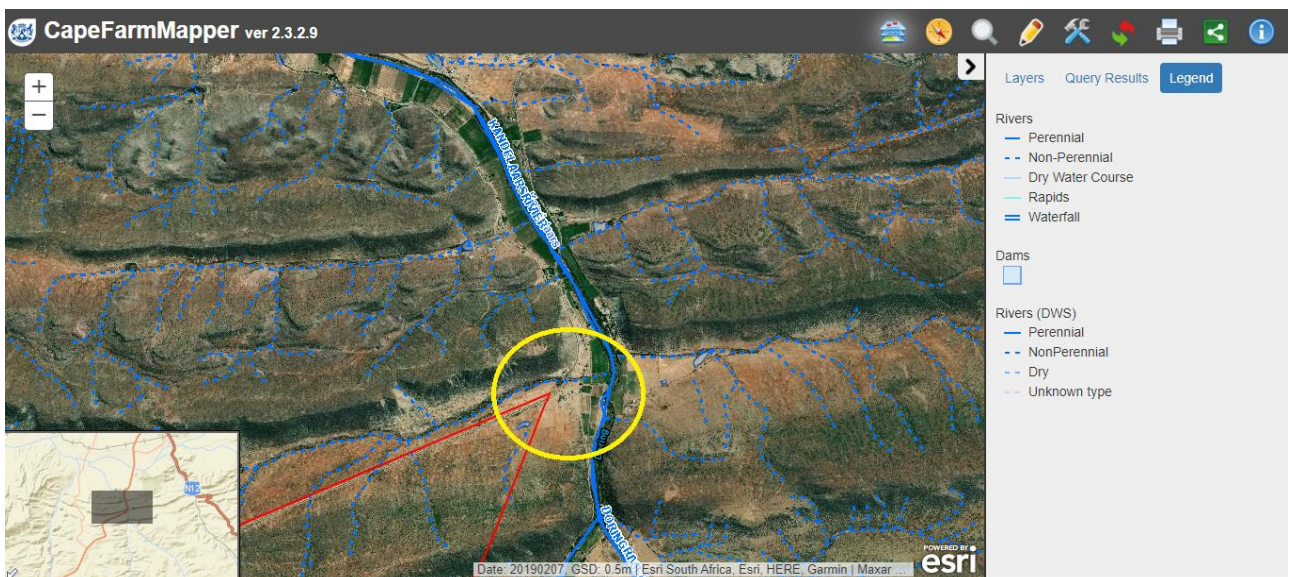
- (b) is for maintenance purposes undertaken in accordance with a maintenance management plan;
- (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;
- (d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or
- (e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies.

And

**Activity no. 27:**

**The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation,** except where such clearance of indigenous vegetation is required for—

- (i) the undertaking of a linear activity; or
- (ii) maintenance purposes undertaken in accordance with a maintenance management plan.



Map 2: The pipeline has been installed more than 32 meters away from the Doring River. However, as depicted in the yellow circle, the pipeline crosses a tributary of the Doring River.



Photograph 1: Cleared area recently planted.



Photograph 2: Area adjacent to the cleared area which had not yet been cleared.

6. Considering the fact that you have decided to apply for the rectification of the unlawful commencement of a listed activity in terms of section 24G of the NEMA and have submitted a section 24G PS, you are hereby instructed to:
  - 6.1 Immediately cease the above listed activities;
  - 6.2 Adhere to the section 24G PS and specified timeframes as received on 17 December 2020 (attached hereto); and
  - 6.3 Inform the Department of any delays/changes in respect of the section 24G PS on the following details; Ms Zaidah Toefy (Head of Sub-Directorate: Rectification) email: [Zaidah.Toefy@westerncape.gov.za](mailto:Zaidah.Toefy@westerncape.gov.za) **and** Mr Raheem Dalwai (Directorate: Environmental Law Enforcement) email: [Raheem.Dalwai@westerncape.gov.za](mailto:Raheem.Dalwai@westerncape.gov.za)
7. Approval of the section 24G application 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, until such time that environmental authorization is granted.
8. Notwithstanding the section 24G application, the Department may commence criminal proceedings should circumstances so require.

### **Varying this Compliance Notice**

9. 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**

10. 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.
11. 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.
12. Any non-compliance with the Compliance Notice must be reported to the Minister, who may:
  - 12.1 revoke any permit or authorisation to which this Compliance Notice relates; and/or
  - 12.2 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)**

13. 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.
14. You may also make representations, in writing, to the Minister to suspend the operation of this Compliance Notice pending finalisation of the objection.

15. The objection must be in writing and forwarded to the Appeal Administrator, Mr Marius Venter 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 Marius Venter (Tel: 021 483 3721)  
Room 809  
8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

By email: [DEADP.Appeals@westerncape.gov.za](mailto:DEADP.Appeals@westerncape.gov.za)

16. 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: 25/01/2021**

Cc:

Ms Zaidah Toefy

Directorate: Rectification

Email: [Zaidah.Toefy@westerncape.gov.za](mailto:Zaidah.Toefy@westerncape.gov.za)

Louise-Mari van Zyl

Cape EAPrac

Email: [louise@cape-eaprac.co.za](mailto:louise@cape-eaprac.co.za)