



**Western Cape
Government**

Environmental Affairs and
Development Planning

Directorate: Environmental Law Enforcement

REFERENCE: 14/1/1/E2/5/9/3/0336/17
ENQUIRIES: Najah Ben Jeddou

BY EMAIL

Email: Billy.Miller@fruitways.co.za

Mr Miller

PO Box 25

Elgin

7180

Received 5.2.20

DIRECTIVE

Dear Sir

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

1. The Department's Pre-Directive dated 7 September 2017, the Botanical Assessment of Portion 22 of Farm Klipfontein 82 dated 26 October 2017 prepared by Nick Helme Botanical Surveys for Mr Miller submitted to this Department, and representation submitted by yourself on 21 January 2019 and have reference.
2. Having considered the evidence before me, I, Mr Achmad Bassier, in my capacity as Director: Environmental Law Enforcement, hereby issue Mr William

Miller with a Directive in terms of section 28(4) of the NEMA, as you are causing and have caused significant 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 pollution and/or degradation of the environment, site inspections of Portion 22 of Farm Klipfontein no. 82, Caledon were conducted by an Environmental Management Inspector from this Directorate on 16 August 2017 and 22 August 2019 and it was confirmed that you have caused significant degradation of the environment by clearing Elgin Shale Fynbos, a Critically Endangered vegetation and excavation of trenches and infilling within a functional wetland without the requisite environmental authorisation. The excavation of channels within the wetland using heavy machinery has caused and continue to cause significant direct impact and long-term damage to vegetation and resulted in drainage of the wetland located within close proximity of Theewaterskloof dam. According to the Botanical Assessment of Portion 22 of Farm Klipfontein 82 received by this Department, the trenching and draining of wetland, has caused significant direct impact and resulted in the damage and loss of plants that is adapted to high soil water condition on site and may continue to have long term significant impact and permanent damage to the remaining vegetation on site and the surrounding areas.

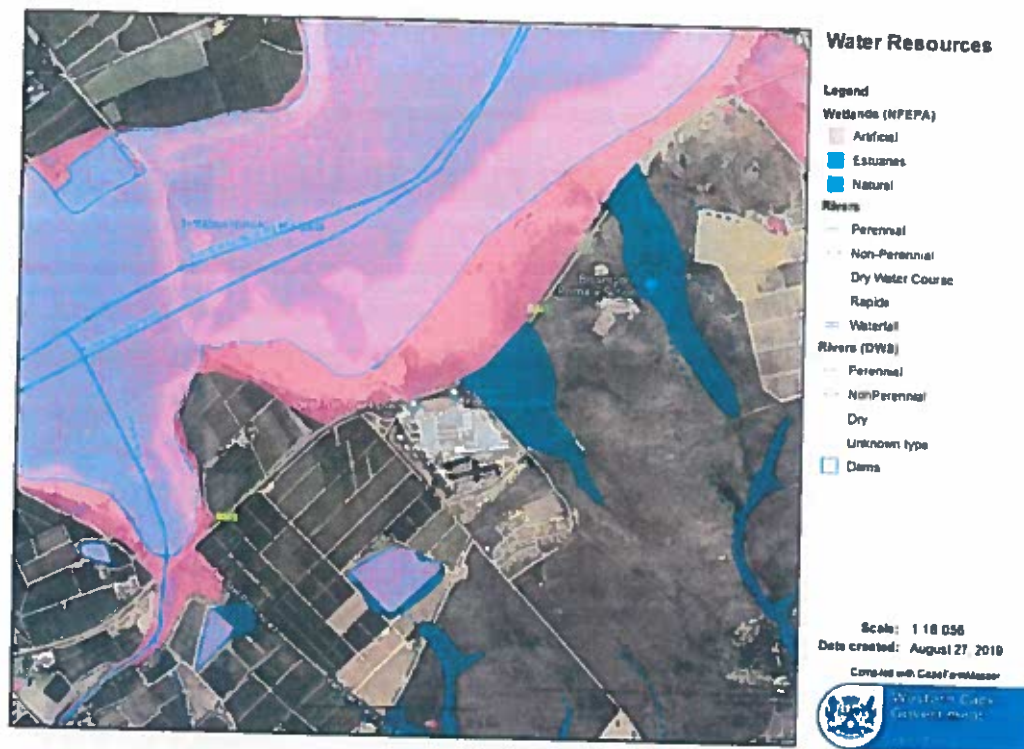
S 34° 02' 58.65" E 19° 09' 09.49"



Aerial map 1: Location of alleged illegal activity and view of the trenches that were dug.



Aerial map 2: Location of alleged illegal activity in relation to the Theewaterskloof dam.



Aerial map 3: CapeFarmMapper image showing the trenches dug within a wetland area.



Photo 1: View of the trench draining the wetland.

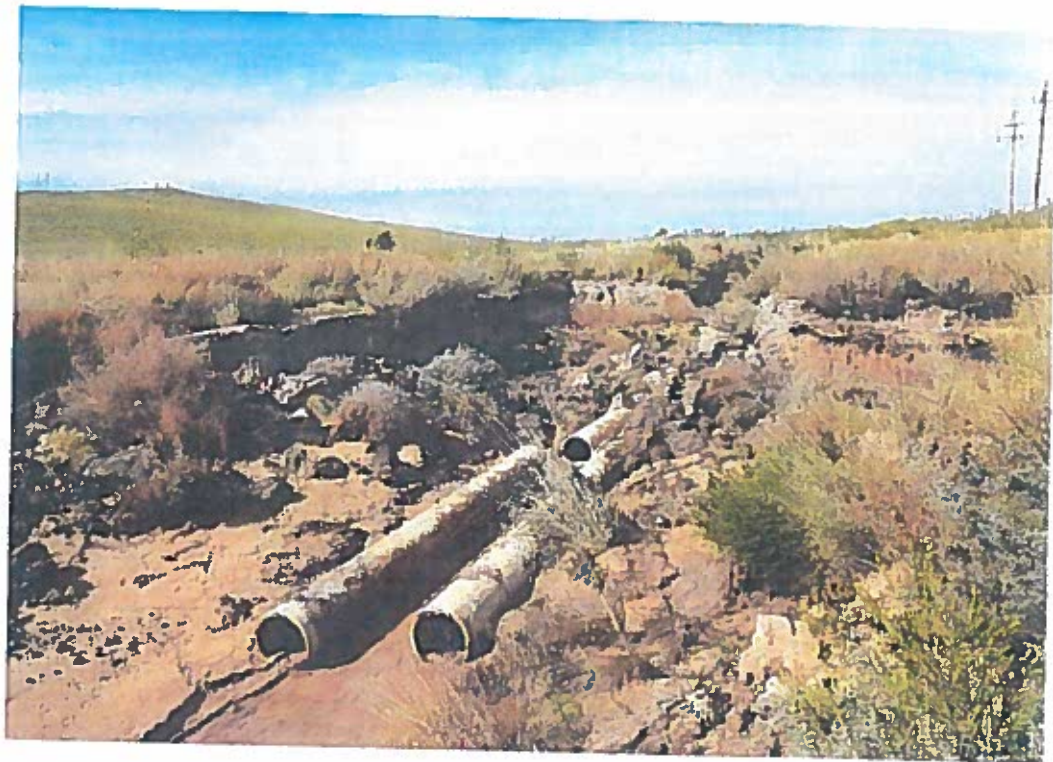


Photo 2: View of erosion and drainage of wetland and pipes within the trench.



Photo 3: View of erosion and drainage of wetland

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

7. You are hereby directed to:

- 7.1 immediately cease the activities described in paragraph 5 above, which are causing and have caused the above pollution and/or degradation;
- 7.2 submit to the Department for approval, **within 30 (thirty) calendar days** of receipt of this Directive, a rehabilitation 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 of the pollution and/or degradation;
 - 7.2.2 identification of proposed remedial and/or mitigation measures; and
 - 7.2.3 Rehabilitate the entire site to its original condition.
8. If the above 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

9. 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.

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

15. 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.

16. The appeal 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

17. 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.

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



Achmad Bassier

Director: Environmental Law Enforcement

Grade 1 Environmental Management Inspector

Date: 10/10/2019

CC: Andrie Sommers (CapeNature)

Email: Asommers@capenature.co.za

Nick Helme (Nick Helme Botanical Surveys)

Email: botaneek@africa.com
