

13 December 2018

Department of Environmental Affairs and Development Planning
Attention: Directorate: Land Management (Region 1)
Private Bag X 9086
Cape Town,
8000

BLACK ORCHARD (PTY) LYD: PROPOSED INCREASE OF THE EXISTING ZWARTFONTEIN DAM WALL, REMAINING EXTENT ZWARTFONTEIN FARM NO. 792 , MALMESBURY, WESTERN CAPE
APPLICABILITY OF NEMA EIA REGULATIONS 2014 CHECKLIST (AS AMENDED)

Dear Sir/Madam

Please find enclosed the Checklist for the Applicability of the NEMA EIA Regulations 2014, as amended (1 x digital copy and 2 x hard copies) for the above mentioned project, for your consideration.

Should you have any queries, please do not hesitate to contact us.

Yours faithfully



Inge Erasmus
EnviroAfrica cc





REFERENCE: 16/3/3/6/1/F5/16/2249/18

ENQUIRIES: Natasha Bieding

DATE: 2019-02-05

The Board of Directors
Milne van Wyk (Black Orchard (Pty) Ltd)
P O Box 6100
ROGGEBAAL
8012

Attention: Hannah Young

Tel.: (021) 421 2129
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Dear Madam

COMMENT ON THE APPLICABILITY OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AND ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 (AS AMENDED) WITH REGARDS TO THE PROPOSED EXPANSION OF AN INSTREAM DAM ON THE REMAINDER OF FARM NO. 792, ZWARTFONTEIN, MALMESBURY

1. The checklist and correspondence dated 13 December 2018 from Inge Erasmus of EnviroAfrica, as received by this Department on the same date, refer.
2. Your attention is drawn to the listed activities in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") and the Environmental Impact Assessment ("EIA") Regulations (as amended), 2014 as defined in Government Notice ("GN") No. R. 983, R. 984 and R. 985 of 4 December 2014. These Regulations came into effect on 8 December 2014. All activities identified as listed activities in the EIA Regulations 2014 (as amended), that had not been lawfully commenced with on 8 December 2014, must not be undertaken without an Environmental Authorisation from the competent authority.
3. This Department has reviewed your correspondence and noted the following:
 - The proposed development entails the expansion of an instream dam comprising of –
 - (i) increasing the height of the dam wall from approximately 11.7m to approximately 14m, i.e. an increase of the height of the dam wall by approximately 2.3m;
 - (ii) expanding the dam's total footprint from 3.8ha to approximately 5ha, i.e. an increase of the dam's total footprint by approximately 1.2ha;

- (iii) increasing the dam's storage capacity from approximately 160 000m³ to 268 000m³, i.e., an increase the dam's storage capacity by approximately 10 8000m³.
- The site is zoned 'Agriculture'.

4. In view of the information submitted, the proposed expansion of an instream dam on the remainder of Farm No. 792, Zwartfontein, Malmesbury will trigger listed activities in terms of the EIA Regulations of 2014 (as amended). Written authorisation is therefore required from the competent authority prior to the undertaking of the said activities.

This determination is based on the following:

4.1. The footprint of the expansion of the instream dam will exceed 100m². **Item 48 of Listing Notice 1 of GN No. R. 983 of 2014 (as amended)** will therefore be triggered, being:

"The expansion of—

- (i) infrastructure or structures where the physical footprint is expanded by 100 square metres or more; or*
- (ii) dams or weirs, where the dam or weir, including infrastructure and water surface area, is expanded by 100 square metres or more;*

where such expansion 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 expansion of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;*
- (bb) where such expansion 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 expansion occurs within an urban area; or*
- (ee) where such expansion occurs within existing roads, road reserves or railway line reserves".*

4.2. The storage capacity of the dam will be increased from 160 000m³ to approximately 26 8000m³. **Item 50 of Listing Notice 1 of GN No. R. 983 of 2014 (as amended)** will therefore be triggered, being:

"The expansion of facilities or infrastructure for the off-stream storage of water, including dams and reservoirs, where the combined capacity will be increased by 50 000 cubic metres or more".

5. An application for Environmental Authorisation must therefore be lodged for the aforesaid listed activities and the Environmental Authorisation granted by the competent authority before the development proposal can be commenced with. The relevant application form is available on the Department's website: www.westerncape.gov.za. Failure to include any applicable listed activity may invalidate the application.

6. It is prohibited in terms of Section 24F of the NEMA for a person to commence with a listed activity unless the competent authority has granted an environmental authorisation for the undertaking of the activity. Failure to comply in terms of this prohibition will result in the matter being referred to the Environmental Law Enforcement Directorate of this Department for possible prosecution. A person convicted of an offence in terms of the above is liable for a fine not exceeding R5 million or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment.
7. This Department reserves the right to revise or withdraw comments or request further information from you based on any information received.

Yours faithfully

M. Thejaire
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HEAD OF COMPONENT

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

Copied to (1) Inge Erasmus (EnviroAfrica)

Fax: (086) 512 0154