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environment & tourism

Department
Environmental Affairs and Tourism
REPUBLIC OF SOUTH AFRICA

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
Ref: 12/12/20/757

Tel: (012) 310 3491 Fax: (012) 320 7539 e-mail: geerlingh@deat.gov.za
Enquiries: Mr John Geerlingh

Mr Rudie Basson
Transnet
P O Box 72501
PARKVIEW
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Fax: (011) 239 6777

Dear Mr Basson

FAX TO: Herman Engelbrecht
COMPANY: Transnet P/O PAGE: 1 OF: 11
FAX NO: 011 239 5826 DATE: _____
FROM: Shoen
COMPANY: SRK PHONE NO: _____
FAX NO: _____  FAX PAD 7551

GRANTING OF CONDITIONAL AUTHORISATION FOR PROJECT REFERENCE 12/12/20/757: UPGRADING OF BERTHS 601-604 AT THE CONTAINER TERMINAL IN THE BEN SCHOEMAN DOCK AT THE PORT OF CAPE TOWN

Your application for authorisation, in terms of section 22 of the Environment Conservation Act, 1989 (Act No. 73 of 1989) in respect of an activity identified in terms of section 21 of the Act, of 14 June 2006 regarding the above matter refers.

This department and the Western Cape Department of Environmental Affairs and Development Planning has evaluated the final environmental impact report dated March 2007 and has considered your application.

By virtue of the power delegated to me in terms of section 33(1) of the Environment Conservation Act, 1989 (Act No. 73 of 1989) I hereby, in terms of section 22(3) of the Act, authorise:

Item 1: The construction, erection or upgrading of-

- (c) transportation routes and structures, and manufacturing, storage, handling or processing facilities for any substance which is considered as dangerous or hazardous and is controlled by national legislation;
- (e) marinas, harbours, and all structures below the high water mark of the sea.

for the purpose of upgrading berths 601-604 at the Ben Schoeman Dock at the Port of Cape Town.

Enclosed please find the record of decision and the conditions under which your application is authorised.

Mihasho wa zwa Vhupo na Vhubendelamashango • Litiko la Tesimondzawo nokuValakaha • Isibhe lemiCanso yokuhlNgongileyo nKhenketho
Ndzanvujo ya Tintaka & Mtshango • Department Omgewingake an Tourism • Lefapha la Tikotsho le.Rohanzhlandi • Lefapha la Bajanala
Kgoro ya Tikologo le Boeti • UmNyango wezeBhuduluko nokuValakaha • Umnyango Wezemvelo NokuValakaha

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Appeals must comply with the provisions of regulation 11 of the environmental impact assessment regulations, (Government Notices No. R. 1182 and 1183 of 6 September 1997), which reads as follows:

- (1) An appeal to the Minister or the provincial authority under section 35(3) of the act must be done in writing within 30 days from the date on which the record of decision was issued to the applicant in terms of regulation 10(1);
- (2) An appeal must set out all the facts as well as the grounds of appeal, and must be accompanied by all relevant documents or copies of them.
- (3) An appeal questionnaire may be used in the lodging of an appeal. It is obtainable from the department's Ms Malebo Baloi, Tel: 012 310 3378 or e-mail: MBaloi@deat.gov.za.



Ms Pam Yako

Director - General

Department of Environmental Affairs and Tourism

Letter signed by: L Molefe

Designation: Acting Chief Director, Env. Impact Management

Date: 2/8/2007

CC: Ms Sharon Jones

SRK

Fax: (021) 685 7105

Ms Melanie Webber

DEA&DP

Fax: (021) 483 4372

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RECORD OF DECISION FOR PROJECT REFERENCE 12/12/20/757: UPGRADING OF BERTHS 601-604 OF THE BEN SCHOEMAN DOCK IN THE PORT OF CAPE TOWN

By virtue of the power delegated by the Minister in terms of section 33(1) Environment Conservation Act, (Act 73 of 1989) ("the Act"), I hereby, in terms of section 22(3) of the Act, authorise Transnet to undertake the activities specified/ detailed below subject to the indicated conditions.

1. DESCRIPTION, LOCATION, EXTENT AND DURATION OF THE ACTIVITY:

As illustrated in the site layout plan in Figure 3-2 (page 21) and the drawing detailing the extent of the area to be dredged in Figure 3-5 (page 25) of the Final Environmental Impact Report dated March 2007, the proposed development at the Port of Cape Town entails the following:

- The upgrading of berths 601-604 of the Ben Schoeman Dock (BSD) for container vessels to allow for the handling of larger container vessels to accommodate the foreseen in growth of container traffic, by:
 - Widening the deck along the berths with 10m to allow for the installation of an additional crane rail to accommodate new container gantry cranes by constructing a concrete suspended deck quay structure supported on piles beyond the existing quay face in the BSD basin as proposed in figure 3-16 on page 40 of the Final EIR dated March 2007
 - Construct a temporary crane rail on berths 603 & 604 to accommodate new ship to shore cranes until the upgrade of berths 601 & 602 is completed
 - Replace existing gantry cranes with new cranes with a higher and wider reach.
- Deepening of approximately 110ha of the BSD basin through dredging from a depth of 10-16m to a depth of 15,5m below Chart Datum by removing approximately 1 230 000m³ which includes a scour trench to a depth of 17m along the berths to allow for the installation of a scour protection mattress of rock, by:
 - Drilling and blasting up to 87 000m³ of hard rock in the BSD basin using small parcel blasting
 - Dredging soft and loosened material using dredging equipment available to Transnet
 - Disposing of dredge material at a suitable offshore marine site as authorised by this record of Decision (ROD) and the subsequent permit from the Directorate: Marine and Coastal Management (MCM).
- The use of the 1.8 ha Culemborg site on the Cape Town Foreshore, east of Lower Church Road between Woodstock and the Port as a construction and contractors yard, which will include facilities for limited fuel supply to the contractor during the construction process as shown in the aerial photograph, Figure 3-21 on page 45 of the Final EIR dated March 2007.
- It is foreseen that the construction process will take approximately 4 years to complete.

2. KEY FACTORS INFORMING THE DECISION:

2.1 In reaching its decision in respect of the application, the Department of Environmental Affairs and Tourism ("the Department") has taken, *Inter alia*, the following into consideration:

- a) The information contained in the:
 - Final Environmental Impact Report (EIR) dated March 2007

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- Specialist Reports contained in the Final EIR dated March 2007
 - Comments on the Final EIR dated 12 July 2007 from the Western Cape: Department of Environmental Affairs and Development Planning (DEA&DP)
 - Comments from the Directorate: Marine and Coastal Management dated 18 April 2007
 - The detailed Issues trail and comments and responses report contained in the Final EIR dated March 2007 as well as the extensive public consultation that were undertaken for previous studies and this study
 - The considerable volume of previous studies undertaken for the proposed Port upgrading
 - The appeal decision on a previous ROD for the upgrading of the port issued by Minister Marthinus van Schalkwyk on 10 May 2006.
- b) The requirement for compliance with applicable international and national legislation and departmental policies, *Inter alia* :
- The Act
 - The principles set out in Section 2 of the National Environmental Management Act, 1998 (Act 107 of 1998) (NEMA)
 - The Marine Living Resources Act, Act 18 of 1998
 - The National Heritage resources Act, Act 25 of 1999
 - Dumping at Sea Control Act, Act 73 of 1980
 - The requirements of the London Protocol, 1996, regarding disposal of dredge material at sea
 - The requirements of the IMO International Convention for the Control and Management of Ship's Ballast Water and Sediments
 - National Ports Act, Act 12 of 2006
- c) The findings of the site inspection undertaken by Mr John Geeringh for DEAT and Melanie Webber from the Western Cape DEA&DP on 30 May 2007
- d) All construction activities will take place within the existing port boundaries and the disposal area in the sea to be used to dispose of the dredge material (Figure 4-1 page 53 of the Final EIR dated March 2007) is the most suitable with the least significant environmental impacts associated with the site.

2.2 In reviewing this information, the Department made the following findings:

- The existing Port facilities is established
- The requirement for the upgrading is clearly understood in view of the volumes of container traffic that is increasing worldwide
- The proposed upgrading will fall within the existing boundaries of the Port of Cape Town
- The proposed development will not result in any loss of undisturbed areas except where dredge disposal will take place but the impacts associated with the dredge disposal is deemed acceptable
- The proposed development is part of Transnet and the National Port Authority new capacity installation programme and is intended to meet the future demands on South African ports, which is under severe pressure, to be able to handle bigger sized vessels more efficiently
- The purpose of the proposed port upgrading is to increase the capacity handling of the port to facilitate the forecast increase in demand for container transfer, as the port activities service mainly the Western Cape export market and to a lesser extent South Africa in its entirety.

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2.3 Based on the information considered, the Department's conclusions are that:

- a) the proposed activities will not lead to substantial detrimental impact on the environment;
- b) the need for the project have been adequately demonstrated;
- c) the activities will result in major socio-economic benefits, not only to the Western Cape area, but to the country as a whole;
- d) the implementation of the mitigation measures proposed in the Final EIR dated March 2007 and conditions set out in this Record of Decision, are considered adequate to minimise detrimental impacts to acceptable levels;
- e) subject to successful implementation of conditions and mitigation measures, the proposed development is likely to be acceptable; and
- f) the principles of section 2 of NEMA can largely be upheld.

2.4 The Department has accordingly decided to grant Transnet authorisation in terms of Regulations R. 1182 and R. 1183 (as amended), promulgated under section 21, 22 and 26 of the Environment Conservation Act (Act 73 of 1989) for the activities specified below, subject to the conditions and provisions listed below.

3. CONDITIONS

3.1 Description of the activity

The authorisation applies in respect of the following activities as listed in Schedule 1, regulation R. 1182 and described in the Final EIR dated March 2007:

Item 1: The construction, erection or upgrading of-

- (c) transportation routes and structures, and manufacturing, storage, handling or processing facilities for any substance which is considered as dangerous or hazardous and is controlled by national legislation;
- (e) marinas, harbours, and all structures below the high water mark of the sea.

3.2 SPECIFIC CONDITIONS

3.2.1 Environmental Management Plan (EMP)

3.2.1.1 Transnet must adhere to the submitted and approved construction EMP dated 5 March 2007 for all the activities related to this authorisation. The accepted EMP consists of:

- The Construction EMP (HMG-EM-M-002);
- The Standard Environmental Specification (HMG-EM-STD-001); and
- The Project Specific Environmental Specification (H500206-1-210-L-SP-0001-JV) dated 5 March 2007.

3.2.1.2 The accepted construction EMP, dated 5 March 2007, including the recommendations and mitigation measures as proposed on pages 158-163 of the Final EIR dated March 2007, must be implemented by Transnet as part of the project development.

3.2.1.3 The accepted construction EMP will be seen as a dynamic document. However, any changes to the EMP must be submitted to the authorities for acceptance before such changes could be effected.

3.2.1.4 Compliance with the accepted construction EMP must form part of all tender documentation for all contractors working on the project and must be endorsed contractually.

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3.2.1.5 Transnet and the National Ports Authority (NPA) must ensure that the operational phase of the development is included in the Environmental Management System already in place for the port.

3.2.2 Environmental Control Officer (ECO)

3.2.2.1 Transnet must appoint a suitably qualified Environmental Control Officer (ECO) who would on a regular basis monitor the project compliance with conditions of the record of decision, environmental legislation and recommendations of the EMP. The cost of the ECO shall be borne by the applicant.

3.2.2.2 The ECO must be appointed before the start of construction and the authorities must be notified of such an appointment for communication purposes.

3.2.2.3 The ECO shall ensure that periodic environmental performance audits are undertaken on the project implementation.

3.2.2.4 The ECO shall submit an environmental compliance report on a quarterly basis, in writing, to the Department, attention of the Director: EIE and copied to the Western Cape: DEA&DP. Such report shall clearly indicate the project reference number on the cover page.

3.2.2.5 The ECO shall maintain the following on site:

- A diary of site visits and audits
- An activity schedule for project implementation as supplied by the applicant
- A copy of the ROD, EMP and all relevant permits for reference purposes
- A non-conformance register
- A public complaint register
- A copy of audits conducted by the ECO

3.2.2.6 The ECO shall remain employed until all rehabilitation measures, as required for implementation due to construction damage, are completed and the site is handed over to Transnet by the contractor for operation.

3.2.3 Monitoring and auditing

3.2.3.1 Records relating to monitoring and auditing must be made available for inspection to any relevant authority in respect of this development.

3.2.3.2 This department reserves the right to monitor and audit the development throughout its full life cycle to ensure that it complies with the conditions stipulated in the record of decision as well as recommendations and mitigation measures contained in the Final EIR dated March 2007 and the construction EMP.

3.2.4 Transportation and handling of hazardous materials.

3.2.4.1 During the construction of the port upgrading, an effective monitoring system must be put in place to ensure safety and to detect any leakage or spillage of substances from all oil containing equipment during transportation, their operation and use.

3.2.4.2 The transportation and handling of hazardous substances must comply with all the provisions of the Hazardous Substances Act, (Act No.15 of 1973), associated regulations as well as SABS 0228 and SABS 0229 codes.

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3.2.5 Rehabilitation after construction

3.2.5.1 Where rehabilitation is required, upon completion of the construction works, at the proposed contractor's yard, no exotic plant species may be used for rehabilitation purposes, only indigenous plants may be utilised.

3.2.5.2 Measures aimed at controlling invasive plant species and weeds must be implemented and must form part of the relevant EMP.

3.2.6 Compliance with other legislation

Transnet, as the holder of this authorisation is responsible for compliance with the following relevant legislation:

3.2.6.1 Archaeological remains, artificial features and structures older than 60 years are protected by the National Heritage Resources Act, 1999 (Act No. 25 of 1999). Should any archaeological artefacts be exposed during excavation for the purpose of laying foundations, construction in the vicinity of the finding must be stopped. An archaeologist must be called to the site for inspection. Under no circumstances shall any artefacts be destroyed or removed from the site. The South African Heritage Resource Agency must be contacted to this effect. Their recommendations should be included in the construction EMP and be adhered to.

3.2.6.2 All provisions of the Occupational Health and Safety Act, 85 of 1993.

3.2.6.3 All provisions of the National Water Act, Act 36 of 1998.

3.2.6.4 All provisions of the National Environment Management: Air Quality Act, Act 39 of 2004.

3.2.6.5 All provisions of the Atmospheric Pollution Prevention Act, Act 45 of 1985.

3.2.6.6 All provisions of the National Environment Management: Biodiversity Act, Act 10 of 2004.

3.2.6.7 Should fill material be required for any purpose, the use of borrow pits must comply with the provisions of the Minerals and Petroleum Resources Development Act, 28 of 2002 administered by the Department of Minerals and Energy.

3.2.6.8 All provisions of the Health Act, Act No. 63 of 1977.

3.2.6.9 All provisions of the Sea Shore Act, Act No. 25 of 1935.

3.2.6.10 All provisions of the Marine Living Resources Act, Act 18 of 1998.

3.2.6.11 All provisions of the Dumping at Sea Control Act, Act 73 of 1980.

3.2.6.12 The London Protocol, 1996

3.2.7.13 All provisions of the IMO International Convention for the Control of Ship's Ballast Water and Sediments.

3.2.7 Water quality management

3.2.7.1 Transnet and shall continuously monitor the near shore and surface water quality and implement measures to ensure that pollution of the resource does not occur. The monitoring programme for water quality and

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measures to control and prevent pollution of the resource shall be included in the construction and operational EMPs. Should there be any evidence of contamination appropriate mitigation action must be implemented immediately to rectify the situation.

3.2.8 Dredging and dredge disposal

3.2.8.1 Transnet is hereby authorised to dispose of dredge material at the proposed site 1 as indicated on figure 4-1 on page 53 of the Final EIR dated March 2007.

3.2.8.2 Transnet must obtain the required permit from the DEAT Directorate, Marine and Coastal Management before construction can start.

3.3 GENERAL CONDITIONS

3.3.1 This authorisation is granted only in terms of section 22 of the Environment Conservation Act, 1989 (Act No.73 of 1989) and does not exempt the holder thereof from compliance with any other legislation.

3.3.2 This authorisation refers only to the activities as specified and described in the Final EIR dated March 2007. Any other activity listed under section 21 of the Environment Conservation Act, 1989 (No. 73 of 1989) which is not specified above, is not covered by this authorisation, and must therefore comply with the requirements of the Environment Conservation Act, Government Notice R. 1182 and R.1183 (as amended).

3.3.3 This authorisation is subject to the approval of the relevant local authorities in terms of any legislation administered by those authorities.

3.3.4 The applicant must, within 7 (seven) calendar days of receipt of this record of decision inform all interested and affected parties and at least include the following:

- (i) That an authorisation has been issued to the applicant to proceed with the construction and operation of the activity. If requested, provide copies of this ROD.
- (ii) That any appeals against the issuing of the authorisation must be lodged with the Minister of Environmental Affairs and Tourism within 30 (thirty) days from the date on which this ROD has been issued to the applicant at the address stipulated in this ROD.
- (iii) That an appeal questionnaire may be used in the lodging of an appeal. It is obtainable from the Department's Ms Malebo Baloi, Tel: 012 310 3378 or e-mail: MBaloi@deat.gov.za.
- (iv) The date on which the ROD was issued to the applicant in terms of regulation 10(1) and the date by which appeals must reach the Minister.

Failure to inform interested and affected parties within the stipulated time period may result in the Minister considering requests from such parties for permission to submit a late appeal favourably.

3.3.5 One week's written notice must be given to this Department before commencement of construction activities. Such notice shall make clear reference to the site location details and reference number given above.

3.3.6 One week's written notice must be given to this Department before commencement of operation activities. Such notice shall make clear reference to the site location details and reference number given above.

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- 3.3.7 The applicant shall be responsible for ensuring compliance with the conditions contained in this ROD by any person acting on his behalf, including but not limited to, an agent, servant, or employee or any person rendering a service to the applicant in respect of the activity, including but not limited to, contractors and consultants.
- 3.3.8 The applicant must notify the Department in writing, within 48 (fourty eight) hours if any condition of this authorisation cannot be, or is not, adhered to. The notification must be supplemented with reasons for non-compliance.
- 3.3.9 A copy of the authorisation and ROD shall be available on site during construction and all staff, contractors and sub-contractors shall be familiar with or be made aware of the contents of this authorisation and ROD.
- 3.3.10 Compliance/non-compliance records must be kept and shall be made available on request from the authorities within five days of receipt of the request.
- 3.3.11 Any changes to, or deviations from, the project description set out in this letter must be approved, in writing, by the Department before such changes or deviations may be effected. In assessing whether to grant such approval or not, the Department may request such information as it deems necessary to evaluate the significance and impacts of such changes or deviations.
- 3.3.12 This Department may review the conditions contained in this letter from time to time and may by notice in writing to the applicant, amend, add or remove a condition.
- 3.3.13 In the event that the predicted impacts exceed the significance as predicted by the independent consultant in the Final EIR dated March 2007, the authorisation may be withdrawn after proper procedures have been followed.
- 3.3.14 In the event of any dispute concerning the significance of a particular impact, the opinion of the Department of Environmental Affairs and Tourism (DEAT) in respect of its significance will prevail.
- 3.3.15 The applicant must notify the Department, in writing, at least 10 (ten) days prior to the change of ownership, project developer or the alienation of any similar rights for the activity described in this letter. The applicant must furnish a copy of this document to the new owner, developer or person to whom the rights accrue and inform the new owner, developer or person to whom the rights accrue that the conditions contained herein are binding on them.
- 3.3.16 Where any of the applicant's contact details change, including the name of the responsible person, the physical or postal address and/or telephonic details, the applicant must notify the Department as soon as the new details become known to the applicant.
- 3.3.17 National government, provincial government, local authorities or committees appointed in terms of the conditions of this application or any other public authority or authorisation shall not be held responsible for any damages or losses suffered by the applicant or his successor in title in any instance where construction or operation subsequent to construction be temporarily or permanently stopped for reasons of non-compliance by the applicant with the conditions of approval as set out in this document or any other subsequent document emanating from these conditions of approval.
- 3.3.18 If any condition imposed in terms of this authorisation is not complied with, the authorisation may be withdrawn after 30 days written notice to the applicant in terms of section 22(4) of the Environment Conservation Act, 1989 (Act No. 73 of 1989).

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- 3.3.19 Failure to comply with any of these conditions shall also be regarded as an offence and may be dealt with in terms of sections 29, 30 and 31 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), as well as any other appropriate legal mechanisms.
- 3.3.20 The applicant shall be responsible for all costs necessary to comply with the above conditions unless otherwise specified.
- 3.3.21 Any complaint from the public during construction must be attended to as soon as possible to the satisfaction of the parties concerned. A complaints register must be kept up to date and shall be produced upon request.
- 3.3.22 Departmental officials shall be given access to the properties earmarked for construction activities for the purpose of assessing and/or monitoring compliance with the conditions contained in this document at all reasonable times.
- 3.3.23 All outdoor advertising associated with this activity, whether on or off the property concerned, must comply with the South African Manual for Outdoor Advertising Control (SAMOAC) available from this Department.

3.4 DURATION OF AUTHORISATION

If the activity authorised by this letter does not commence within 4 (four) years from the date of signature of this letter, the authorisation will lapse and the applicant will need to reapply for exemption or authorisation in terms of the above legislation or any amendments thereto or any subsequent new legislation.

4. CONSEQUENCES OF NON-COMPLIANCE

The applicant must comply with the conditions set out in this letter. Failure to comply with any of the above conditions may result in, *inter alia*, the Department withdrawing the authorisation, issuing directives to address the non-compliance – including an order to cease the activity – as well as instituting criminal and/or civil proceedings to enforce compliance.

5. APPEALS

Appeals in respect of this decision must be lodged with the Minister of Environmental Affairs and Tourism within 30 (thirty) days of the date of this decision. Appeals can be submitted utilising one of the following methods:

By facsimile: (012) 322 1936
 By post: Private Bag X447, Pretoria 0001
 By hand: 2nd Floor, Fedsure Forum Building, North Tower, cor. Van der Walt and Pretorius Streets, Pretoria.

Appeals must comply with the provisions of Regulation 11 of Government Notice No. R. 1183 which reads as follows:

"An appeal to the Minister or provincial authority under section 35(3) of the Act must be done in writing within 30 days from the date on which the ROD was issued to the applicant in terms of regulation 10(1);

An appeal must set out all the facts as well as the grounds of appeal, and must be accompanied by all relevant documents or copies of them which are certified as true by a commissioner of oaths."

An appeal questionnaire may be used in the lodging of an appeal. It is obtainable from the Department's Ms Malebo Baloi, Tel: 012 310 3378 or e-mail: MBaloi@deat.gov.za.

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Should the applicant wish to appeal any aspect of this decision, the applicant must notify and furnish copies of the appeal which will be submitted to the Minister, to all registered interested and affected parties. Proof of such notification must be submitted to the Minister with the appeal. Failure to comply with this provision may result in the Minister refusing to consider the appeal.

6. APPLICANT:

Transnet
P O Box 72601
PARKVIEW
2122

Contact person: Mr Rudie Basson

Tel: (011) 239 6565
Fax: (011) 239 5777

7. CONSULTANT:

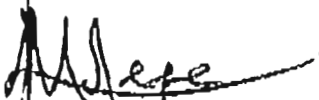
SRK
Postnet Suite #206
Private Bag X 18
RONDEBOSCH
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Contact person: Ms Sharon Jones

Tel: (021) 659 3060
Fax: (021) 685 7105

8. SITE VISIT

A site visit was undertaken by Mr John Geeringh from the Department, Ms Melanie Webber from the Western Cape DEA&DP and Transnet personnel on 30 May 2007.



Ms Pam Yako
Director - General
Department of Environmental Affairs and Tourism
Letter signed by: L Molefe
Designation: Acting Chief Director, Env Impact Management

Date: 2/8/2007