



**REFERENCE:** 14/1/1/E1/5/6/3/0715/21  
**ENQUIRIES:** Safwaan Abrahams

**BY EMAIL:** [ashie.majestic@gmail.com](mailto:ashie.majestic@gmail.com)

Lessee

Farm KR 29

**PHILADELPHIA**

7304

## **PRE-COMPLIANCE NOTICE**

Attention: Mr. A. Sadick

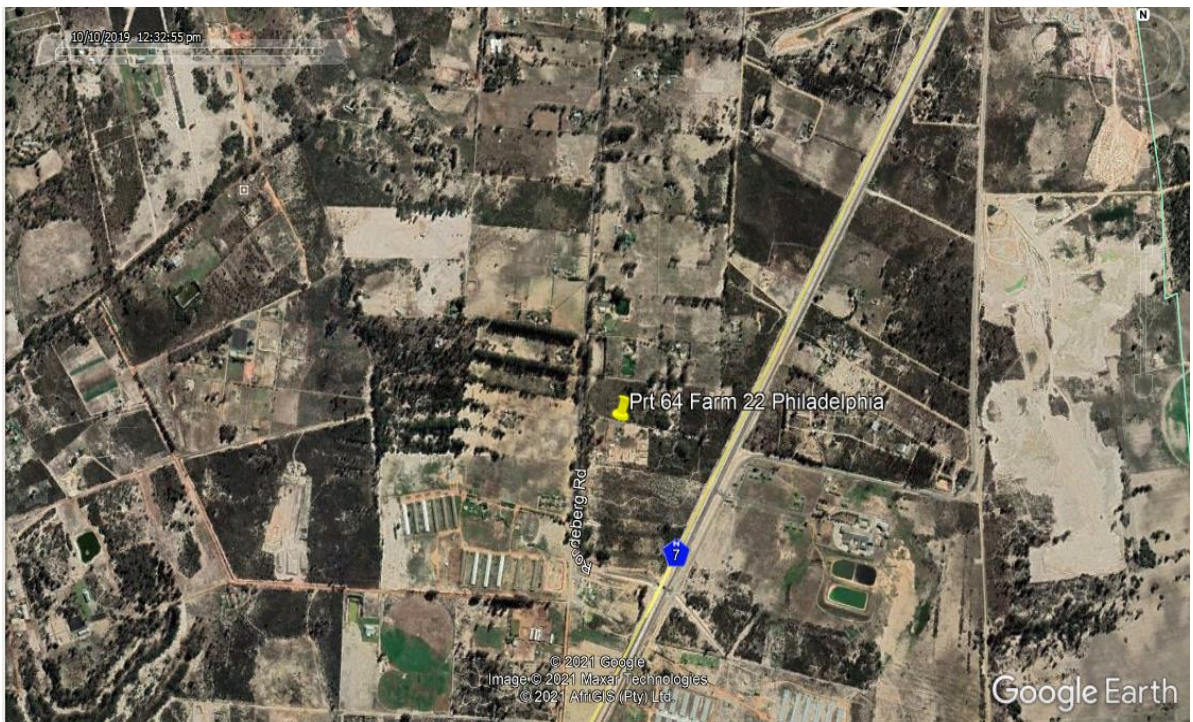
Dear Sir

### **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 on Portion 64 of farm, Zoute Rivier no 22, Philadelphia by an Environmental Management Inspector from the Department's Directorate: Environmental Law Enforcement on 28 April 2021 and it was confirmed that you have commenced with the alleged illegal development for a proposed diesel drop-off facility without obtain the prerequisite environmental authorisation. The development entails

the proposed installation of 4 x 23m<sup>3</sup> with a combined storage capacity of 92m<sup>3</sup>. During the site investigation it has been noted that the bund wall formation to house the diesel tanks has commenced. As defined in NEMA, an activity has commenced when “the start of any physical implementation in furtherance of a listed activity or specified activity including site preparation and any other action on the site”. As such, the development of the bund structure as well as intent shown to commence with a listed activity in terms of the NEMA EIA Regulations for the establishment of a diesel drop-off facility has taken place without obtain prerequisite environmental authorisation.

**[33°36'2.23"S; 18°35'42.53"E]**



Aerial map 1: Location of alleged illegal activity.

2. In terms of section 24F of the NEMA, no activity listed in the Environmental Impact Assessment (“EIA”) Regulations Listing Notice 1 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 activity without environmental authorisation:

EIA Regulations Listing Notice 1 of 2017:

Activity Number: 14

***The development of facilities or infrastructure, for the storage, or for the storage and handling, of a dangerous good, where such storage occurs in containers with a combined capacity of 80 cubic metres or more but not exceeding 500 cubic metres.***



Photo 1: Commencement of the bund walls where tanks will be housed.



Photo 2: Commencement of bund walls.



Photo 3: 8 x23m<sup>3</sup> above ground storage tanks which are not in use are stored on the property. tanks are also being refurbished on the property.

4. 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.
5. 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:
  - 5.1 immediately cease the above listed activity;
  - 5.2 investigate, assess and evaluate the impact that the listed activity has / has had on the environment;
  - 5.3 remove the bund structure and return the affected area to its original condition; and
  - 5.4 carry out any other measure necessary to rectify the effects of the unlawful activity.
6. 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.
7. You are afforded a period of **7 (seven) 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.
8. If you inform the Department, in respect of paragraph 7 above, that you intend to rectify the non-compliance, you must cease the above listed activity and submit to the Department for approval, **within 30 (thirty) calendar days of receipt of this Pre-Compliance Notice**, a method statement compiled by a suitably qualified and experienced independent environmental control officer, which must include the following:

- 8.1 assessment and evaluation of the impact on the environment; and
- 8.2 identification of proposed remedial and/or mitigation measures;
9. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.
10. 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.
11. If you wish to continue with the listed activity you may apply for environmental authorisation by way of a section 24G ("s24G") application. However, such application does not constitute permission to continue with the listed activity, which remains unlawful unless environmental authorisation is granted.
12. Should you choose to apply in terms of s24G on the NEMA, you must submit to the Department for approval, **within 30 (thirty) calendar days** of receipt of this Pre-Compliance Notice, a project schedule compiled by a suitably qualified and experience independent environmental assessment practitioner. The project schedule must clearly stipulate the time frames in terms of the s24G process and by when a s24G application will be submitted to the Sub-Directorate: Rectification.

13. Notwithstanding the section 24G application, the Department may issue a Compliance Notice and/or commence criminal proceedings should circumstances so require.



**Achmad Bassier**

**Director: Environmental Law Enforcement**

**Grade 1 Environmental Management Inspector**

**Date: 02/07/2021**

(1) Mr. J. de Jong (WCG: Chief Town and Regional Planning)

Email: [Johan.deJongh@westerncape.gov.za](mailto:Johan.deJongh@westerncape.gov.za)

(2) Mr. Walter (Property Owner)

Email: [walter@alliancefuel.co.za](mailto:walter@alliancefuel.co.za)

(3) Land Use Management: CoCT Blaauwberg District

Email: [Blaauwberg.hub@capetown.gov.za](mailto:Blaauwberg.hub@capetown.gov.za)

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**ENQUIRIES:** Safwaan Abrahams

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Farm KR 29

**PHILADELPHIA**

7304

For Attention: A. Sadick

Dear Sir

**RE: ALLEGED UNLAWFUL DEVELOPMENT (I.E. DIESEL STORAGE TANKS ETC) ON PTN 64  
OF FARM NO 22, KLEIN DASSENBERG, PHILADELPHIA.**

1. The above matter, the Department's Pre-Compliance Notice, dated 02 July 2021 and Ms. B. Ditcham of Sharples Environmental Services response to this Directorate's Pre-Compliance Notice, dated 13 September 2021, has reference.
2. After careful consideration of your representations, the Department's Directorate: Environmental Law Enforcement ("this Directorate") is not in agreement with the assertions contained therein for the reasons outlined below.
3. In light of your response dated 13 September 2021, you have advised that the NEMA EIA Regulations 2017, in accordance with NEMA (Act 107 of 1998), are

[www.westerncape.gov.za](http://www.westerncape.gov.za)



not applicable “*considering that there has been no physical implementation in furtherance of a listed activity or specified activity, including site preparation or any other action*”. In view of the aforesaid you were of the opinion that a Pre-Compliance Notice is not warranted. However, please note that a Pre-Compliance was issued to you based on the commencement of a listed activity in terms of the NEMA, 2017 Regulations as outlined in the Pre-Compliance Notice.

4. The commencement pertains to the “*development of facilities or infrastructure...*” which in this instance entails the site preparation, development of a bund/ retaining wall and all associated infrastructure without obtaining prerequisite Environmental Authorisation. Your attention is therefore drawn to the following definitions set out in terms of the NEMA:

**“development”** means the *building, erection, construction or establishment of a facility, structure or infrastructure, including associated earthworks or borrow pits, that is necessary for the undertaking of a listed or specified activity*”.

And

**“commence”**, an activity has commenced when “*the start of any physical implementation in furtherance of a listed activity or specified activity including site preparation and any other action on the site*”.

5. As such, it is confirmed that you have undertaken the above-mentioned activity through site preparation while establishing the bund area and associated infrastructure (as referred to in the listed activity) for the tanks to be installed on a later stage. Furthermore, intent has been shown by commencing with a listed activity in terms of the NEMA EIA Regulations for the establishment of a diesel drop-off facility, without obtaining the prerequisite environmental authorisation.

6. During the site inspection conducted on 28 April 2021 it was revealed that you intend to establish 4x23 m<sup>3</sup> tanks which would have a combined capacity of 92 m<sup>3</sup> for a fuel drop-off facility. However, subsequently it was noted in your response that you now intend on establishing 3 x 23 m<sup>3</sup> and 1 x 10m<sup>3</sup> tanks which will have a combined storage capacity of 79 m<sup>3</sup>.
  
7. Furthermore, in your response it is noted that you were instructed “that should you propose to develop the property further and choose to expand the infrastructure to increase the storage capacity on site with the remaining tanks, you must follow the appropriate environmental procedures to obtain environmental authorisation, prior to any expansion or new construction”. Kindly be advised that you were incorrectly instructed. Irrespective of having a combined capacity of less than 80 m<sup>3</sup>, the NEMA EIA Regulations will still be triggered. This is based on the fact that the development is located outside an urban area, while exceeding 30 m<sup>3</sup> in fuel storage capacity. Please refer to **Activity 10 of Listing Notice 3 of NEMA EIA Regulations, 2017** quoted below.
  
8. We reiterate that there are reasonable grounds to believe that you have commenced with the following listed activities, without obtaining prerequisite environmental authorisation:

EIA Regulations Listing Notice 1 of 2017:

Activity no. 14:

***The development of facilities or infrastructure, for the storage, or for the storage and handling, of a dangerous good, where such storage occurs in containers with a combined capacity of 80 cubic metres or more but not exceeding 500 cubic metres.***

Or

EIA Regulations Listing Notice 3 of 2017:

Activity Number: 10

***The development and related operation of facilities or infrastructure for the storage, or storage and for handling of a dangerous good, where such storage occurs in containers with a combined capacity of 30 but not exceeding 80 cubic metres.***

- i. Western Cape**
  - ii. Areas zoned for use as public open space or equivalent zoning;
  - iii. All areas outside urban areas; or**
  - iv. Inside urban areas:
    - (aa) Areas seawards of the development setback line or within 200 metres from the high-water mark of the sea if no such development setback line is determined;
    - (bb) Areas on the watercourse side of the development setback line or within 100 metres from the edge of a watercourse where no such setback line has been determined; or  
Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined.
9. As such, you are therefore required to rehabilitate the site to its original state by removing the associated infrastructures (i.e. pipelines, bund wall and associated infrastructure) intended for the development of the fuel drop-off facility as mention under point 5 of the Pre-Compliance Notice.

10. You are hereby requested to comply with paragraph 8 of the Department's Pre-Compliance Notice (dated 02 July 2021) and submit to this Directorate within **14 (fourteen) calendar days** of receipt of this letter a method statement compiled by a suitably qualified and experienced independent environmental control officer, which must include the following:

10.1. Assessment and evaluation of the impact on the environment; and

10.2. Identification of proposed remedial and/or mitigation measures.

11. Approval of the above method statement 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.

12. If the above method statement is approved by the Department, you will be obliged to take the necessary remedial/mitigation measures at your own cost.

13. If you wish to continue with the listed activity you may apply for environmental authorisation by way of a section 24G application. However, such application does not constitute permission to continue with the listed activity, which remains unlawful unless environmental authorisation is granted.

14. Should you have any further queries, please do not hesitate to contact the investigating officer at [Safwaan.Abrahams@westerncape.gov.za](mailto:Safwaan.Abrahams@westerncape.gov.za) or Tel: 021 483 0780.



**Achmad Bassier**

**Director: Environmental Law Enforcement**

**Grade 1 Environmental Management Inspector**

**Date: 29/11/2021**

CC (1) Mr. J. de Jong (WCG: Chief Town & Regional Planning) Email: [Johan.deJongh@westerncape.gov.za](mailto:Johan.deJongh@westerncape.gov.za)  
(2) Mr. Walter (Property Owner) Email: [walter@alliancefuel.co.za](mailto:walter@alliancefuel.co.za)  
(3) Land Use Management: CoCT Blaauwberg District Email: [Blaauwberg.hub@capetown.gov.za](mailto:Blaauwberg.hub@capetown.gov.za)  
(4) Ms. B. Ditcham (SES Environmental Service) Email: [betsy@sesc.net](mailto:betsy@sesc.net)

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**ENQUIRIES:** Safwaan Abrahams

**BY EMAIL:** [ashie.majestic@gmail.com](mailto:ashie.majestic@gmail.com)

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Attention: Mr. A. Sadick

## COMPLIANCE NOTICE

Dear Sir

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

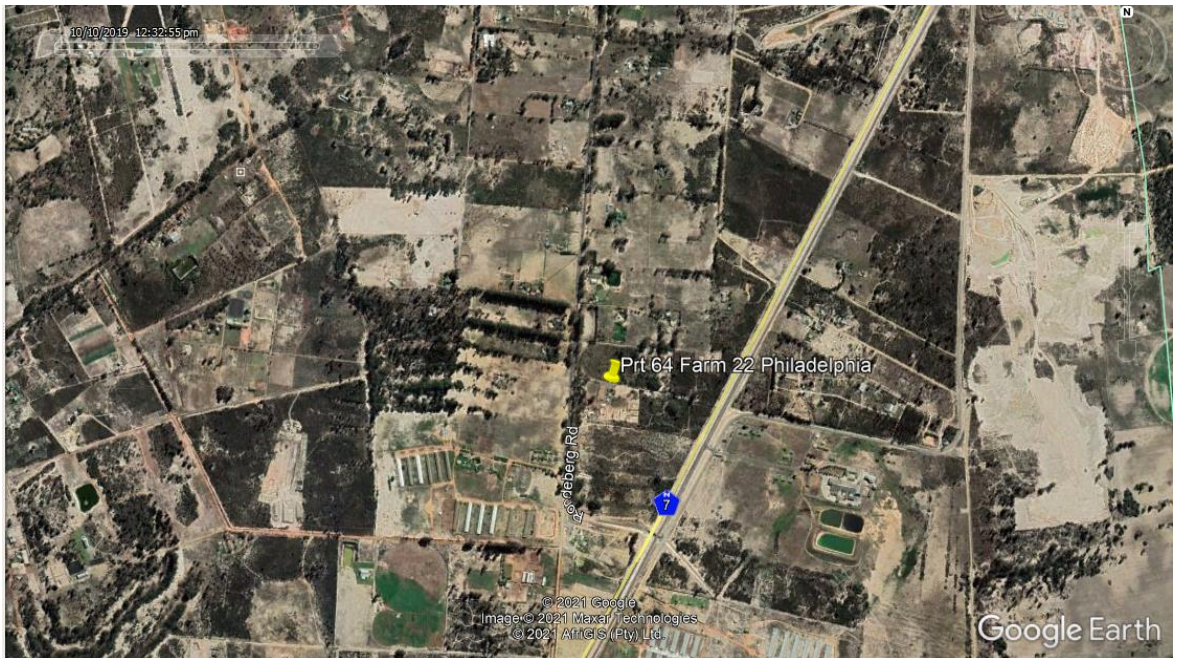
1. The Department's Pre-Compliance Notice ("PCN"), dated 02 July 2021, your rebuttal to the PCN, dated 13 September 2021, the Directorate: Environmental Law Enforcement's ("this directorates") responding letter, dated 29 November 2021 and your s24G Application Project Schedule ("PS") dated 19 January 2022, has reference.

2. I, Achmad Bassier, in my capacity as an Environmental Management Inspector Grade 1, hereby issues Mr. A. Sadick Lessee of Portion 64 of Farm No 22, Klein Dassenberg, Philadelphia 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 Notice 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 on Portion 64 of Farm No 22, Klein Dassenberg, Philadelphia by an Environmental Management Inspector from the Department's Directorate: Environmental Law Enforcement on 28 April 2021 and it was confirmed that you have commenced with the alleged illegal development for a proposed diesel drop-off facility, without obtaining the prerequisite environmental authorisation. The development entails the proposed installation of 4 x 23m<sup>3</sup> above ground storage tanks with a combined storage capacity of 92m<sup>3</sup>. During the site investigation it has been noted that the bund wall formation to house the diesel tanks has commenced. As defined in NEMA, an activity has commenced when "*the start of any physical implementation in furtherance of a listed activity or specified activity including site preparation and any other action on the site*". As such, the development of the bund structure as well as intent shown to commence with a listed activity in terms of the NEMA EIA Regulations for the establishment of a diesel drop-off facility has taken place without obtain prerequisite environmental authorisation.

[33°36'2.23"S; 18°35'42.53"E]



Aerial map: Location of alleged illegal 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 2017:

Activity Number: 10

***The development and related operation of facilities or infrastructure for the storage, or storage and for handling of a dangerous good, where such storage occurs in containers with a combined capacity of 30 but not exceeding 80 cubic metres.***

- i. Western Cape**
- ii. *Areas zoned for use as public open space or equivalent zoning;*
- iii. All areas outside urban areas; or**
- iv. *Inside urban areas:*



- (aa) Areas seawards of the development setback line or within 200 metres from the high-water mark of the sea if no such development setback line is determined;
- (bb) Areas on the watercourse side of the development setback line or within 100 metres from the edge of a watercourse where no such setback line has been determined; or  
Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined.

**And/ or**

EIA Regulations Listing Notice 1 of 2017:

Activity no. 14:

***The development of facilities or infrastructure, for the storage, or for the storage and handling, of a dangerous good, where such storage occurs in containers with a combined capacity of 80 cubic metres or more but not exceeding 500 cubic metres.***



Photo 1: Commencement of the bund walls where tanks will be housed.



Photo 2: Commencement of bund walls.



Photo 3: 8 x23m<sup>3</sup> above ground storage tanks which are not in use are stored on the property.

**6. You are hereby instructed to:**

- 6.1 Immediately implement the measures stipulated within the PS in accordance with the time-frames provided; and
- 6.2 Inform the Department of any delays/changes in respect of the section 24G PS on the following details:

Zaidah Toefy (Head of Sub-Directorate: Rectification) email: [zaidah.toefy@westerncape.gov.za](mailto:zaidah.toefy@westerncape.gov.za) and Mogammad Arshad Holliday (Directorate: Environmental Law Enforcement) email: [safwaan.abrahams@westerncape.gov.za](mailto:safwaan.abrahams@westerncape.gov.za)

## Varying this Compliance Notice

7. 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

8. 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.
9. 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.
10. Any non-compliance with the Compliance Notice must be reported to the Minister, who may:
  - 10.1 revoke any permit or authorisation to which this Compliance Notice relates; and/or
  - 10.2 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)**

11. 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.
12. You may also make representations, in writing, to the Minister to suspend the operation of this Compliance Notice pending finalisation of the objection.
13. 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)

14. 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: 28/03/2022**

Cc:

CC (1) Mr. J. de Jong (WCG: Chief Town & Regional Planning) Email: [Johan.deJongh@westerncape.gov.za](mailto:Johan.deJongh@westerncape.gov.za)  
(2) Mr. Walter (Property Owner) Email: [walter@alliancefuel.co.za](mailto:walter@alliancefuel.co.za)  
(3) Land Use Management: CoCT Blaauwberg District Email: [Blaauwberg.hub@capetown.gov.za](mailto:Blaauwberg.hub@capetown.gov.za)  
(4) Ms. B. Ditcham (SES Environmental Service) Email: [betsy@sesc.net](mailto:betsy@sesc.net)

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