



REFERENCE: 14/1/1/E1/1/3/3/0418/17
ENQUIRIES: Fundiswa Zingitwa-Lwana

BY EMAIL

liezel@edwheim.co.za

E & E BUHR TRUST
Sandringham Service Road
KRAAIFONTEIN
7570

COMPLIANCE NOTICE

Dear Mr Buhr

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

1. The Department's Pre-Compliance Notice issued on 26 September 2017 has reference.
2. I, Dr Eshaam Palmer, in my capacity as an Environmental Management Inspector Grade 1, hereby issues Mr EWH Buhr of the E & E Buhr Trust

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 and 3 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 Dassenberg Farm Erf CA 15-0, Atlantis by an Environmental Management Inspector from the Department's Directorate: Environmental Law Enforcement on 10 July 2017 and 17 May 2018 respectively, and it was confirmed that you have commenced with the clearing of indigenous vegetation, development of canals exceeding 10 square metres in size and the removal and moving of soil and sand of more than 10 cubic metres from a watercourse without the requisite environmental authorisation.



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 2014

Activity No. 19 of 2014

The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from—

- (i) a watercourse;*
- (ii) the seashore; or*
- (iii) the littoral active zone, an estuary or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater—*

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; or*
- (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies.*

6. The Department wishes to further advise that on 4 December 2014, the Minister of Environmental Affairs promulgated the 2014 EIA Regulations. These NEMA EIA Regulations came into effect on 8 December 2014 and was amended on 7 April 2017. Accordingly, activities which commenced prior to

7 April 2017 and which are similarly listed in the 2014 Regulations require prior environmental authorisation. The activities quoted below are still similarly listed, and reads as follows:

EIA Regulations Listing Notice 1 of 2014 (as amended)

Activity No. 19 of 2014

*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.*

EIA Regulations Listing Notice 3 of 2014 (as amended)

Activity No. 12:

The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is

required for maintenance purposes undertaken in accordance with a maintenance management plan.

(a) In **Western Cape** province:

- (i) Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;
- (ii) Within critical biodiversity areas identified in bioregional plans;
- (iii) Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line or even in urban areas;
- (iv) On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; or
- (v) On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister.

Activity No. 14

The development of—

- (i) canals exceeding 10 square metres in size;

- (ii) channels exceeding 10 square metres in size;
 - (iii) bridges exceeding 10 square metres in size;
 - (iv) dams, where the dam, including infrastructure and water surface area exceeds 10 square metres in size;
 - (v) weirs, where the weir, including infrastructure and water surface area exceeds 10 square metres in size;
 - (vi) bulk storm water outlet structures exceeding 10 square metres in size;
 - (vii) marinas exceeding 10 square metres in size;
 - (viii) jetties exceeding 10 square metres in size;
 - (ix) slipways exceeding 10 square metres in size;
 - (x) buildings exceeding 10 square metres in size;
 - (xi) boardwalks exceeding 10 square metres in size; or
 - (xii) infrastructure or structures with a physical footprint of 10 square metres or more
- (f) In **Western Cape**:
- i. Outside urban areas, in:
 - (aa) A protected area identified in terms of NEMPAA, excluding conservancies;
 - (bb) National Protected Area Expansion Strategy Focus areas;
 - (cc) World Heritage Sites;
 - (dd) Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent authority;
 - (ee) Sites or areas listed in terms of an International Convention;

- (ff) *Critical biodiversity areas or ecosystem service areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;*
- (gg) *Core areas in biosphere reserves; or*
- (hh) *Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined*



Photo 1-2: Clearing of more than 300m² of indigenous vegetation and the development of canals exceeding 10 square metres in size



Photo 3-4: Moving of soil and sand of more than 5 cubic metres in size from a watercourse

7. You are hereby instructed to:

7.1 Immediately cease the above listed activities;

7.2 submit to the Department within **30 (thirty) calendar days** of receipt of this Compliance Notice a rehabilitation plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:

7.3 assessment and evaluation of the impact on the environment; and
identification of proposed remedial and/or mitigation measures.

8. Approval of the plan 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.

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. 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.
11. Notwithstanding the section 24G application, the Department may commence criminal proceedings should circumstances so require.

Varying this Compliance Notice

12. 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

13. 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.
14. 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.
15. Any non-compliance with the Compliance Notice must be reported to the Minister, who may:

- 15.1 revoke any permit or authorisation to which this Compliance Notice relates; and/or
- 15.2 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)

16. 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.
17. You may also make representations, in writing, to the Minister to suspend the operation of this Compliance Notice pending finalisation of the objection.
18. The objection must be in writing and forwarded to the Appeal Administrator, Mr Jaap de Villiers 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 Jaap de Villiers (Tel: 021 483 3721)
Room 809

8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

By email: Jaap.DeVilliers@westerncape.gov.za

19. 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.



Dr E Palmer

Director: Environmental Law Enforcement

Grade 1 Environmental Management Inspector

Date: 28/6/2018

CC: (1) Mr Kyle October CoCT Email: Kyle.October@capetown.gov.za
(2) Mr Daniel van Jaarsveld CoCT Email: Daniel.vanjaarsveld@capetown.gov.za
