



24G Application Reference: 14/2/4/2/3/D2/28/0020/21

ADMINISTRATIVE FINE NOTICE

The Managing Director
Langkloof Plase (Pty) Ltd
PO Box 689
OUDTSHOORN
6620

Email: hein.jonker@opsa.co.za/jps@scwireless.co.za

Tel: (044) 203 3220

Attention: Heinrich Jonker & Johannes Petrus Schoeman

Dear Sir /Madam

ADMINISTRATIVE FINE IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): THE UNLAWFUL CLEARANCE OF VEGETATION AND CONSTRUCTION OF DAMS ON PORTION 1 OF FARM 108 LOWER SCHOONBERG, BOSSE DAM, HEROLD, GEORGE

1. Your application in terms of section 24G of the NEMA ("the section 24G application") dated 18 May 2021 have reference.
2. In order for the Department to process your application, you are required to pay an administrative fine of **R125 000 (One hundred and twenty-five thousand Rand)**.
3. The above administrative fine is determined by the type of activity or activities undertaken and the impact or impacts it has on the environment.
4. Please note that the continued operation, conduct or undertaking of the activity or activities will remain unlawful and should an environmental authorisation be issued at the conclusion of the section 24G application process, it shall only take effect from the date on which it has been issued.

5. Please note that in terms of section 24G(4) of the NEMA you must pay the administrative fine **before** the competent authority may consider your report and thereafter issue or refuse an environmental authorisation.

Notification of the administrative fine decision

6. The applicant must in writing, within 14 days of the date of the administrative fine decision ("the decision") –
 - 6.1. notify all registered interested and affected parties ("I&APs") of –
 - 6.1.1. the amount of the administrative fine;
 - 6.1.2. the reasons for the decision as detailed in Annexure A; and
 - 6.1.3. the date of the decision;
 - 6.2. draw the attention of all registered I&APs to the manner in which they may access the decision; and
 - 6.3. provide the details of all registered I&APs (postal and/ physical address, contact number, facsimile and e-mail address) to all registered I&APs and the original decision-maker in the event that an appeal has been lodged in terms of the *National Appeal Regulations, 2014*.
7. Should the applicant intend to appeal the administrative fine, an appeal must be submitted to the appeal administrator in accordance with regulation 4 of the *National Appeal Regulations, 2014* within 20 (twenty) days from the date that the notification of the decision was sent to the applicant by the competent authority.
8. Should an interested and affected party intend to appeal the administrative fine, an appeal must be submitted to the appeal administrator within 20 (twenty) days from the date that the notification of the decision was sent to the registered interested and affected parties by the applicant.

Method of payment of the administrative fine

9. Please be advised that payment of the above administrative fine may be made by cash, cheque or electronic transfer in the following manner:

Cash Payment

The fine amount may be paid at the cashier's office of this Department, ground floor, Utilitas Building, 1 Dorp Street, Cape Town on Monday to Friday between 08h30 and 12h30.

The following allocations must be given to the cashier when making cash payment:

Reference No: **S24G00309**

Item: Section 24G administrative fine

Company/ Individual Name

ID No.

Cheque Payment

The cheque must be crossed and made payable to the Department of Environmental Affairs and Development Planning and may either be deposited at the aforementioned cash office under the allocations mentioned above or deposited directly in the Department's bank account (see bank details below).

Electronic Transfer

An electronic transfer may be made to the following bank account:

Name of Bank	:	NEDBANK
Name of Account	:	Provincial Government of the Western Cape: Department of Environmental Affairs and Development Planning
Account Type	:	Current Account
Account Number	:	1452 045 003
Branch Name	:	NEDBANK CORPORATE
Branch Code	:	145 209
Reference No.	:	S24G00309

10. Kindly forward a copy of **the proof of payment** (e.g. receipt, deposit slip, electronic transfer confirmation) to the Department and quote the abovementioned reference number to ensure that the Department may acknowledge payment of the administrative fine.

11. This proof of payment must also be accompanied by proof that the abovementioned administrative fine was brought to the attention of registered I&APs as required in paragraph 6 above.

12. The fine must be **paid within 30 (thirty) calendar days** from the date of this letter. If no such payment is received within the stipulated timeframe and no appeal has been lodged with the appeal administrator, the Department may proceed with appropriate criminal investigative action which may result in criminal prosecution and/or the deferral of a decision to issue an environmental authorisation until such time that the criminal investigation is concluded and:

12.1. National Prosecuting Authority has decided not to institute prosecution;

- 12.2. the applicant is acquitted or found not guilty after prosecution; or
- 12.3. the applicant is convicted by a court of law.

13. Please be advised that the notice of payment of the administrative fine is **not an authorisation** for the consequences of unlawful commencement of a listed activity/ies according to the NEMA.

14. Further consideration of your application will only continue upon receipt and acknowledgement of payment of the administrative fine.

Appeals

Appeals must comply with the provisions contained in the *National Appeal Regulations, 2014* (Government Notice No. R. 993 in Government Gazette No. 38303 of 08 December 2014). Please note the provisions of Regulation 1(2) of the National Appeal Regulations, 2014 when calculating the period of days.

15. Should an appeal be lodged with the appeal administrator against the administrative fine, you are hereby advised of the following:

15.1. An appellant (if the applicant) must –

15.1.1. submit an appeal in accordance with regulation 4 of the *National Appeal Regulations, 2014*, to the appeal administrator and a copy of the appeal to the decision maker, any registered I&APs and any organ of state with interest in the matter within 20 (twenty) calendar days from the date that the notification of the decision was sent to the applicant by the competent authority.

15.2. An appellant (if NOT the applicant) must –

15.2.1. submit an appeal in accordance with regulation 4 of the *National Appeal Regulations, 2014*, to the appeal administrator, and a copy of the appeal to the applicant, any registered I&APs, any organ of state with interest in the matter and the decision maker within 20 (twenty) calendar days from the date that the notification of the decision was sent to the registered interested and affected parties by the applicant.

15.3. The applicant (if not the appellant), the decision-maker, I&APs and organs of state must submit their responding statements, if any, to the appeal authority and the appellant within 20 (twenty) calendar days from the date of receipt of the appeal submission.

16. An appeal application form must be submitted by means of one of the following methods

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- By post: Western Cape Ministry of Local Government, Environmental Affairs and
Development Planning
Private Bag X9186
CAPE TOWN
8000
- By facsimile: (021) 483 4174; or
- By hand: Attention: Mr J. de Villiers /Marius Venter
Room 809
8th Floor Utilitas Building, Dorp Street, Cape Town, 8001
- By e-mail: DEADP.Appeals@westerncape.gov.za

16.1. A prescribed appeal application form as well as assistance regarding the appeal processes is obtainable from the office of the Minister at: Tel. (021) 483 3721, E-mail DEADP.Appeals@westerncape.gov.za or URL <http://www.westerncape.gov.za/eadp>.

ADV. CHARMAINE MARÉ
DIRECTOR: ENVIRONMENTAL GOVERNANCE

CC: (1) Melissa Mackay (EAP)

Email: mel@cape-eaprac.co.za

ANNEXURE A: REASONS FOR THE DECISION

In determining the quantum of the administrative fine, the competent authority took, *inter alia*, the following into consideration:

- The section 24G application dated 18 May 2021 with supporting environmental impact assessment and mitigation measures.
- Public participation conducted for the application by the Environmental Assessment Practitioner.
- The Environmental Management Programme dated 18 May 2021 submitted for the application.
- Relevant information contained in the Departmental EIA Guideline and Information Document Series (March 2013), including, the Guidelines on Need and Desirability, Public Participation and Alternatives.
- The site inspection conducted on 07 September 2021, attended by Officials of this Directorate.

All relevant information presented to the competent authority was taken into account in the determination of the fine quantum. A summary of the issues which, according to the competent authority, were the most significant reasons for the decision is set out below.

1. PUBLIC PARTICIPATION

A public participation process as outlined in section 24G(1)(vii)(dd) of the NEMA, “...a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how issues raised have been addressed...” was undertaken.

The public participation process conducted by the EAP comprised of the following:

- An advertisement was placed in the **George Herald** newspaper on 20 May 2021;
- A site notice was erected; and
- Letters were sent to interested and affected parties (“I&APs”) and the municipal ward councillor on 18 May 2021.
- I&APs were afforded the opportunity to provide comments on the application.

1.1 Consultation with organs of state in terms of section 24O of the NEMA

The following organs of state provided comment on the application:

- CapeNature
- Breede Gouritz Catchment Management Agency (BGCMA)
- Department of Agriculture

At the end of the public participation process, no comments were received during the 60-day commenting period.

2. CALCULATION OF THE ADMINISTRATIVE FINE

Section 44(1)(aC) of the NEMA makes provision for the “*Minister to make regulations relating to the procedure and criteria to be followed in the determination of an administrative fine in terms of section 24G.*”

The Section 24G Fine Regulations, 2017 (“the regulations”) as referred to above have come into effect on 20 July 2017 which stipulate the procedure to be followed and criteria for the determination of a section 24G administrative fine. All applications submitted after the promulgation date are subject to the aforesaid regulations which stipulate the maximum fine applicable to an application is R5 million, as per the NEMA amendments.

The S24G fine calculator is a guide that is not rigidly applied and is used to determine an appropriate fine (to the maximum of R5 million) based on applicable impacts resulting from the unlawful commencement activity/ies on the receiving environment. The determination of a fine is based on the assessment undertaken for the section 24G application and the significance of impacts of the activity/ies on the environment. Each section 24G administrative fine is determined on its own merit and is dependent on the information provided in the application. The section 24G fine is not a criminal sanction and the section 24G process is distinct and not punitive in nature.

In accordance with section 24(4) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* (“NEMA”) the application contains, *inter alia*, an assessment of the consequences and impacts on the environment, including cumulative impacts, and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the activity as well as a description of the mitigation measures that will be undertaken.

2.1 ASSESSMENT OF IMPACTS, BENEFITS AND MITIGATION MEASURES

The determination of the administrative fine is based on the administrative fine calculator which was developed by the National Department of Environmental Affairs. The fine

calculator (which is a guide that is not applied rigidly) was based on the following indexes that were informed by the environmental assessment practitioner as specified in the section 24G application:

- Socio-Economic Impact Index
- Biodiversity Impact Index
- Sense of Place &/ or Heritage Impact Index
- Pollution Impact Index.

The administrative fine decision and the reasons for the decision were informed by the section 24G application with supporting information, submitted by the environmental assessment practitioner, which stated *inter alia* the following:

2.1.1 Socio-economic Impact

The **Socio-Economic Impact Index** was rated by the EAP that *"The activity is not giving, has not given and will not give rise to any negative socio-economic impacts"*.

The motivation for this rating by the EAP was that *"The repair and expansion of the existing dam is in furtherance of economic sustainability and diversification of the agribusiness on the property. This will ensure that the socio-economic status is maintained and improved on."*

Having regard to the impacts caused by the activities, I am in agreement with the fine committee's recommendation that the administrative fine calculator be scored consistent with the score of the application that: *"The activity is not giving, has not given and will not give rise to any negative socio-economic impacts"*.

The motivation for this rating is that the activity provides economic sustainability and diversification of the agribusiness on the property and within the area. Agriculture plays a significant role in the George Municipality and Garden Route Municipality as it provides opportunities to increase un- or low skilled employment and agriculturally grown products for local and international markets and for beneficiation in the manufacturing sector.

2.1.2 Biodiversity Impacts

The **Biodiversity Impact Index** was rated by the EAP that *"The activity is not giving, has not given and will not give rise to any impacts on biodiversity"*.

The motivation for this rating by the EAP was that *“The aquatic specialist has confirmed that the impacts to the watercourse area are Very Low to Negligible. The alien invasive management of the site will improve the local site conditions from their previous ecological status.”*

Having regard to the impacts caused by the activities, I am in agreement with the fine committee's recommendation that the administrative fine calculator be scored consistent with the score of the section 24G application that: *“The activity is not giving, has not given and will not give rise to any impacts on biodiversity”*.

The motivation for this rating was based on the aquatic specialist conclusions that that the impacts to the watercourse area were considered 'Very Low' to 'Negligible'. The activities were commenced to manage and maintain watercourses following wildfires at the Lower Schoonberg Farm that had resulted in aspects of degradation of the two watercourses due to the methods of vegetation removal and subsequent infilling that has occurred. However, the removal of the alien vegetation provides the opportunity to rehabilitate the watercourses at the site.

2.1.3 Sense of place and Heritage Impacts

The **Sense of place and Heritage Impacts Index** was rated by the EAP that *“The activity is in keeping with the surrounding environment and / or does not negatively impact on the affected area's sense of place and /or heritage”*.

The motivation for this rating by the EAP was that *“The activity is related to an existing dam and agricultural operation, thus there is no change to the current sense of place.”*.

Having regard to the impacts caused by the activities, I am in agreement with the fine committee's recommendation that the administrative fine calculator be scored consistent with the score of the section 24G application that: *“The activity is in keeping with the surrounding environment and / or does not negatively impact on the affected area's sense of place and /or heritage”*.

The motivation for this rating is that the activity is located on agricultural land with existing dam infrastructure. No change of land use is required, and the farm dam is in keeping with the surrounding landscape.

2.1.4 Pollution Impact

The **Pollution Impact Index** was rated by the EAP that *"The activity is not giving, has not given and will not give rise to any pollution"*.

The motivation for this rating by the EAP was that *"The repair and maintenance of the dam and the ongoing alien invasive management will not give rise to pollution."*

Having regard to the impacts caused by the activities, I am in agreement with the fine committee's recommendation that the administrative fine calculator be scored consistent with the score of the section 24G application that: *"The activity is not giving, has not given and will not give rise to any pollution"*.

The motivation for this rating is that based on the conclusions of the s24G application. The repair and maintenance of the dam and the ongoing alien invasive management will not give rise to any pollution.

The indices contained in the section 24G application submitted by the EAP were used in the determination of the fine. This was assessed, reviewed and confirmed by observations obtained during the site inspection on 07 September 2021.

It should also be noted that the section 24G fine calculator distinguishes between the following two categories of offenders:

- Category 1 offenders are (firm) trusts, body corporates, close corporations, companies, parastatals and government departments.
- Category 2 offenders are individual/natural persons.

The calculation of the administrative fine is also based on the fact that the applicant in this matter is a category 1 offender. Nevertheless, the amounts determined by the section 24G fine calculator for both categories were analysed to assess whether it is appropriate to regard the applicant under the abovementioned category, given the personal circumstances of the applicant. I am of the opinion that it is appropriate to regard the applicant in this matter is a category 1 offender.

2.2 CONSIDERATION OF DEVIATION FROM THE CALCULATED FINE

Further to the above, the following factors were taken into account in determining whether the fine recommended by the fine calculator is appropriate in the circumstances of this matter and whether there are reasons to deviate from the quantum of the fine recommended:

2.2.1 Aggravating factors, or the absence thereof, such a blameworthiness, non-compliance history and ignoring previous advice.

In this regard, the applicant and/or its director have no previous conduct such as which occurred in the present matter which constituted an offence and required prior environmental authorisation.

2.2.2 Mitigation factors such as preventative measures, co-operation with the environmental authority, immediate voluntary remediation and restoration and personal circumstances.

In this regard, I have considered the applicant's conduct and am of the view that mitigating factors exist which justify a deviation from the calculated administrative fine amount. The aquatic specialist confirmed that the impacts to the watercourse area are 'Very Low' to 'Negligible'. The management and maintenance of the watercourses were undertaken following the impact of wildfires at Lower Schoonberg Farm that had resulted in aspects of degradation of the two watercourses. This was due to the methods of vegetation removal and subsequent infilling that occurred on site. However, the removal of alien vegetation provides the opportunity to rehabilitate watercourses at the site, allowing the status of the watercourses to change from a Present Ecological State of E to D. Due to the fact that the ecological state of the watercourses could be improved through mitigation and remediation, a deviation and reduced administrative fine is warranted. The fine amount is thus reduced from R250 000 to R125 000.

2.2.3 The potential costs that the applicant will incur in complying with directions as to remedial measures.

In this regard, the contents of the Application, together with the assessment report and suggested mitigation/rehabilitation measures are noted.

2.2.4 Social/Public benefit factors resulting from activities.

In this regard, I am of the opinion that the applicant's activities provide no direct social service to the affected community and will have little, or no, positive impact on job creation or poverty alleviation in the area which justifies a deviation from the recommended fine amount.

It is acknowledged that the National Environmental Management Principles (set out in section 2 of the NEMA) which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment. In terms of the NEMA Principles, the effects of decisions on all aspects of the environment are to be taken into account. I am satisfied that the

NEMA principles, including the consideration, assessment and evaluation of the social, economic and ecological impacts of activities (disadvantages and benefits), have been correctly applied in this application and this fine is appropriate in the light of such consideration and assessment.

In all the circumstances, and after weighing all the above, I am of the view that a fine of R125 000 (One hundred and twenty-five thousand rand) is an appropriate fine. Please find attached a copy of the calculated fine **(Appendix 1)**.

2016 SECTION 24G CALCULATOR

IMPACT INDEX CALCULATOR

1 Socio Economic Impact Index		Weighting	20	
Description of variable			Selection	Score
a	The activity will not give rise to any negative socio-economic impacts	0.5	X	10
b	The activity could give rise to negative socio-economic impacts, but highly localised	3		0
c	The activity could give rise to significant negative socio-economic and regionalized impacts	7		0
d	The activity could result in wide-scale socio-economic impacts.	10		0

Notes:

2 Biodiversity Impact Index		Weighting	30	
Description of variable			Selection	Score
a	The activity will not give rise to any impacts on biodiversity	0.5	X	15
b	The activity could give rise to localised biodiversity impacts	3		0
c	The activity could give rise to significant biodiversity impacts	8		0
d	The activity is likely to permanently / irreversibly transform/ destroy a recognised biodiversity 'hot-spot' or threaten the existence of a species or sub-species.	10		0

Notes: x

3 Sense of Place & / or Heritage Impact Index		Weighting	20	
Description of variable			Selection	Score
a	The activity is in keeping with the surrounding environment and / or does not negatively impact on the affected area's sense of place and /or heritage	0.5	X	10
b	The activity is not in keeping with the surrounding environment and will have a localised impact on the affected area's sense of place and/or heritage	3		0
c	The activity is not in keeping with the surrounding environment and will have a significant impact on the affected area's sense of place and/ or heritage	8		0
d	The activity is completely out of keeping with the surrounding environment and will have a significant impact on the affected area's sense of place and/ or heritage	10		0

Notes:

4 Pollution Impact Index		Weighting	30	
Description of variable			Selection	Score
a	The activity will not give rise to any pollution	0.5	X	15
b	The activity could give rise to pollution with low impacts.	3		0
c	The activity could give rise to pollution with moderate impacts.	5		0
d	The activity could give rise to pollution with high impacts.	8		0
e	The activity could give rise to pollution with major impacts.	10		0

Notes:

TOTAL SCORE 50
IMPACT INDEX 5.00%

Applicant

Company , Government & Parastatal. 250,000.00

Committee Reasons for Deviation (only when relevant)

The aquatic specialist confirmed that the impacts to the watercourse area are 'Very Low' to 'Negligible'. The management and maintenance of the watercourses following the wildfires at Lower Schoonberg Farm resulted in aspects of degradation of two watercourses. This was due to the methods of vegetation removal and subsequent infilling that occurred on site. However, the removal of alien vegetation provides the opportunity to rehabilitate watercourses at the site, allowing the status of the watercourses to change from a Present Ecological State of E to D. Due to the fact that the ecological state of the watercourses could be improved through mitigation and remediation, a deviation was warranted.

Fine Amount

R125 000