



**REFERENCE: 14/3/6/B4/45/0457/20**

Mr Johan Toerien  
Feptiq (Pty) Ltd.  
P.O. Box 1298  
**WORCESTER**  
6949

Tel: 023 342 5486  
Email: johan@heliospetroleum.co.za

Dear Mr Toerien

**APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE SECTION 24G ADMINISTRATIVE FINE ISSUED FOR THE UNLAWFUL REMOVAL OF SAND FROM A WATERCOURSE ON FARM DE MOND VAN HARTEBEST RIVER NO. 379, SHELL ULTRA CITY, WORCESTER**

1. Your appeal lodged against the administrative fine issued by the Department of Environmental Affairs and Development Planning on 5 March 2020, refers.
2. After considering all relevant facts and supportive documents I wish to advise that, in terms of section 43(6) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") I have decided to dismiss your appeal and confirm the decision of the delegated officer.
3. In terms of section 24G(4) of the NEMA you are hereby informed that in order for the competent authority to process your application further, an administrative fine of **R250,000** (two hundred and fifty thousand rand) must be paid.

**4. Payment may be made by cash, cheque or electronic transfer as follows:**

Cash Payment:

The amount may be paid at the cashier's office of the Department of Environmental Affairs and Development Planning, 1st floor Utilitas Building, 1 Dorp Street, Cape Town from Mondays to Fridays between 8h00 and 12h30. The following allocations must be given to the cashier when making the payment:

Reference No: **S24G00256**

Company/ Individual Name:

ID No:

Cheque Payment:

The cheque must be crossed and made payable to the Department and may either be deposited at the aforementioned cash office under the allocations mentioned above or deposited directly in the bank account. (See bank details below)

Electronic Transfer

An electronic transfer may be made to the following account:

Name of Bank: NEDBANK

Name of Account: Provincial Government of the Western Cape Department of Environmental Affairs and Development Planning

Room 809 Utilitas Building, Cape Town, 8001 Private Bag X9186, Cape Town, 8000  
tel: +27 21 483 3721 fax: +27 21 483 4174 e-mail: DEADP.Appeals@westerncape.gov.za

Account Type: Current Account  
Account Number 1452 045 003  
Branch Name: NEDBANK CORPORATE  
Branch Code: 145 209  
Reference No.: **S24G00256**

5. You are hereby requested to forward a copy of the proof of payment (e.g. receipt, deposit slip, electronic transfer confirmation) to the Sub-directorate: Rectification for the attention of Mr Ziyaad Allie (Tel: 021 483 2991, Fax: 021 483 4033/2704 and Email: Ziyaad.Allie@westerncape.gov.za) and quote the abovementioned reference number to ensure that the competent authority can acknowledge the payment of the administrative fine.
6. The administrative fine must be paid within 30 days from the date of this letter. However, the payment of the Administrative Fine in instalments may be arranged with the Competent Authority. If no payment of the Administrative Fine is received and/or no extended period arrangement of the fine payment is made with the Competent Authority within the abovementioned timeframe, the Competent Authority will proceed with the law enforcement action with regards to non-compliance with Section 24F of the NEMA.
7. Please take note that the administrative fine is not an authorisation of the unlawful commencement of the listed activities according to the NEMA. Consideration of your application will only commence upon the payment of the administrative fine.

**8. REASONS FOR THE DECISION:**

- 8.1. I note the following:
  - o Due to the upgrade of the N1, the applicant had to find alternative sites to establish the Shell Ultra City (on either side of the N1) ("development").
  - o The Environmental Impact Assessment ("EIA") process, for which an Environmental Authorisation ("EA") was issued on 4 November 2011, for the Shell Ultra City service station sites was based on the fact that the water will be supplied by the Breede River Municipality via a supply pipeline from the Worcester Preloads Reservoir to the sites. Thus, the impacts associated with a pipeline from the Worcester Preloads Reservoir to the development was assessed.
  - o The Breede River Municipality subsequently withdrew their confirmation to supply water to the sites because the development is located outside of the urban edge of Worcester.
  - o South African National Roads Agency ("SANRAL") would not approve locating the water supply line with the road reserve of the N1.
  - o The lack of water supply to the development placed it at risk which prompted the construction of a pipeline, partly through wetlands, without the requisite EA.
- 8.2. You assert that the construction of the pipeline was based on the mistaken belief that an EA is not required as it followed an existing servitude road and a cleared area, in conjunction with the property's agricultural zoning.

I herewith state that due to the fact that you previously underwent an EIA process for the current Shell Ultra City service stations, you should have sought professional advice regarding any relevant statutory requirements for the pipeline and /or consulted an EAP about the alignment of the route for the pipeline.

8.3. The reasons outlined in the original administrative fine decision are applicable to the appeal decision and the following are additional reasons to uphold your appeal and confirm the decision of the decision of the delegated officer:

8.3.1. The Section 24G administrative fine imposed on the appellant is in line with the requirements set out in section 24G(4) of the NEMA which requires that a person who has commenced with an activity without a requisite Environmental Authorisation, must pay a Section 24G administrative fine, which may not exceed R5 million, as determined by the competent authority.

8.3.2. The administrative fine calculator is based on the following indices (under section 9: Impact Summary of Activity of the Final EIA Report) that were informed by the Environmental Assessment Practitioner on the section 24G EIA Report, as follow:

- Social Benefit Index -

The Social Benefit Index was rated in the EIA Report that "*The activity provides indirect social service / infrastructure to the affected community*".

I conclude that the development provides an indirect social service to the surrounding community and passing travellers on the N1.

- The Socio-Economic Impact Index –

The Socio-Economic Impact Index was rated that "*The activity will not give rise to any significant negative socio-economic impacts*".

I conclude that no negative socio-economic impacts resulted from the unlawful construction of the development. The construction of two service stations (on either side of the N1) increased the number of available employment opportunities.

- Biodiversity Impact Index –

The Biodiversity Impact Index was rated that "*The activity could give rise to localised biodiversity impacts*". The pipeline traverses an area covered with Breede Alluvium Fynbos which is classified as Endangered.

The pipeline also traverses through four wetland areas, two of which are considered artificial wetlands. One wetland was assessed and classified as an 'Ecological Category C' wetland (moderately modified) with the vegetation in the wetland being rated as largely modified and the remainder wetland was classified as an 'Ecological Category E' wetland (seriously modified).

Three of the wetlands impacted on by the pipeline were rated to be of moderate conservation importance due to their functioning as a buffer are between the terrestrial areas and Bothaspruit Freshwater Ecological Priority Area ("FEPA").

However, the wetlands through which the pipeline traverses were not significantly impacted on by pipeline.

I conclude that the impact of the pipeline on the biodiversity in the area is limited and localised.

- The Sense of Place &/or Heritage Impact Index -  
The Sense of Place &/or Heritage Impact Index is rated that *"The activity is in keeping with the surrounding environment and / does not negatively impact on the affected area's sense of place and / or heritage"*.

The motivation for this rating is that the pipeline did not alter the agricultural landscape of the area as it was installed underground.

I conclude that the impact of the pipeline on the on the sense of place is negligible.

- Pollution Impact Index –  
The Pollution Impact Index was rated that *"The activity will not give rise to any pollution"*.

The motivation for this rating is that pipeline did not generate any waste that required disposal.

I conclude that the no pollution impacts emanated from the construction of the pipeline.

- 8.3.3. The Section 24G Fine Regulations, 2017 states that Applicants should be categorised with regards to individuals or companies/parastatals/government organs of state.

In terms of regulation 4(1)(f) of the S24G Fine Regulations, 2017, consideration must be given to whether an applicant is a firm (*"means anybody incorporated by, or established in terms of, any law as well as any partnership, trust, parastatal or organ of state"*) or a natural person.

There is a rational basis for proceeding from the viewpoint that a juristic person should be treated differently to an individual. A juristic person, which include firms, companies, government departments or parastatals, would conduct their business on a larger scale, and would be have greater access to resources than an individual.

Feptiq (Pty) Ltd. is registered as a corporation and operates for financial gain. The section 24G application was submitted on behalf of Feptiq (Pty) Ltd. for the construction of the pipeline to ensure that the service stations can operate.

I am satisfied that the correct category of applicant was applied in the calculation of the fine.

- 8.3.4. The 2017 Section 24G Calculator, which was used to calculate the administrative fine is the same as the previous 2014 Section 24G Calculator. The only difference is that the Social Benefit index is excluded in the 2017 Section 24G Calculator, as any social benefit is considered a mitigating factor that is applied to all applications.

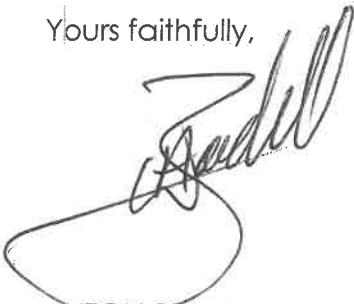
At the time that the application was submitted (in December 2016), the relevant calculator was available on the Department's website, and thus was available to you.

I am satisfied that you had sufficient access to the calculator that was used to calculate the Section 24G Administrative Fine.

- 8.3.5. When considering the lowest appropriate fine in this instance, and in considering the Need & Desirability as mitigating factor, the fine of R250 000, which is the minimum fine amount for the category of applicant, is still considered as reasonable. In terms of the fraction of the amount relevant to R5 million, R250 000 equates to 5% of the maximum fine amount.
  - 8.3.6. The pipeline traverses an area covered with Breede Alluvium Fynbos which is classified as Endangered.
  - 8.3.7. The pipeline also traverses through four wetland areas. Three of the wetlands impacted on by the pipeline was rated to be of moderate conservation importance due to their functioning as a buffer area between the terrestrial areas and Bothaspruit Freshwater Ecological Priority Area ("FEPA").
  - 8.3.8. Rehabilitation measures for the areas impacted on, particularly the wetland areas, have been proposed by the appellant and will be implemented.
  - 8.3.9. The pipeline did not alter the agricultural landscape of the area as it was installed underground.
9. 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. As such, the consideration, assessment and evaluation of the social, economic and ecological impacts of activities (disadvantages and benefits) must be undertaken, and decisions are to be appropriate in the light of such consideration and assessment.

Your interest in the future of our environment is greatly appreciated.

Yours faithfully,



**ANTON BREDELL**  
**WESTERN CAPE MINISTER OF LOCAL GOVERNMENT,**  
**ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

**DATE:** 15/9/2020

CC: (1) Ms C Muller (EAP)  
(2) Ms Z Toefy (Sub-Directorate: Rectification)  
(3) Mr J Truter (Werksmans Attorneys)  
(4) Directorate - Financial Management

email: chantel@environmentalconsultants.co.za  
email: Zaidah.toefy@westerncape.gov.za  
email: jtruter@werksmans.com  
email: DEADP.Banking@westerncape.gov.za



**REFERENCE: 14/3/6/B4/45/0457/20**

Adv. Charmaine Maré  
Directorate: Environmental Governance  
Western Cape Department of Environmental Affairs  
and Development Planning  
Private Bag X9086  
**CAPE TOWN**  
8000

Tel: (021) 483 0502

Email: Charmaine.Mare@westerncape.gov.za

Dear Adv. Maré

**APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE SECTION 24G ADMINISTRATIVE FINE ISSUED FOR THE UNLAWFUL REMOVAL OF SAND FROM A WATERCOURSE ON FARM DE MOND VAN HARTEBEEST RIVER NO. 379, SHELL ULTRA CITY, WORCESTER**

The appeal lodged against Section 24G administrative fine issued for the abovementioned development, refers.

Please find attached the Appeal decision regarding this matter as issued to the applicant in terms of Section 24G of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)*.

Yours faithfully,

ANTON BREDELE

**WESTERN CAPE MINISTER OF LOCAL GOVERNMENT,  
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

DATE: 15/9/2020