



M 3/6/5

Ms Anastasia Smith
Anastasia's Fresh Farm Produce Pty (Ltd)
P.O. Box 902
RYGERSDAL
7352

Tel: (081) 878 1603
e-mail: anastasafarm@gmail.com

Dear Ms Smith

APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE ADMINISTRATIVE FINE ISSUED FOR THE UNLAWFUL CLEARING OF INDIGENOUS VEGETATION ON PORTION 73 OF FARM KLEIN DASSENBERG, ATLANTIS

Your appeal lodged against the quantum of the section 24G fine issued by the Department of Environmental Affairs and Development, has reference.

After careful consideration of your appeal, as well as supporting documentation received, I have decided to partially uphold your appeal and reduce the fine of R125 000-00 (One hundred and twenty-five thousand Rand) to R10 000-00 (Ten thousand Rand).

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 R10 000-00 (Ten thousand Rand) must be paid.

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, ground floor Utilitas Building, 1 Dorp Street, Cape Town from Mondays to Fridays between 8h30 and 12h30. The following allocations must be given to the cashier when making the payment:

809 Utilitas Building, Cape Town, 8001 Private Bag X9186, Cape Town, 8000
tel: +27 21 483 3721 fax: +27 21 483 4174 www.westerncape.gov.za/eadp

Reference No: **S24G00206**

Item: section 24G Administrative fine

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
Account Type:	Current Account
Account Number	1452 045 003
Branch Name:	NEDBANK CORPORATE
Branch Code:	145 209
Reference No.:	S24G00206

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 (Jamie-Lee van Zyl) (Tel: (021) 483 8347, Fax: (021) 483 4033 and Email: jamie-lee.vanzyl@westerncape.gov.za and quote the abovementioned reference number to ensure that the case officer can acknowledge the payment of the administrative fine.

The administrative fine must be paid within sixty (60) days from the date of this letter. However, the payment of the administrative fine in instalments may be arranged with the Department. If no such payment is received within the abovementioned timeframe, the competent authority will proceed with the law enforcement action.

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.

You are kindly requested to notify all registered interested and affected parties ("I&AP's") in writing, within 14 (fourteen) days of the date of the appeal decision of the outcome of the appeal and the reasons for the appeal decision.

REASONS FOR MY DECISION

I have considered the appeal and all the relevant documentation and took previous administrative fine decisions into account in my decision to deviate from the initial administrative fine of R125 000-00 to R10 000-00. I particularly want to emphasize the following reasons contributing to an informed appeal decision:-

The administrative fine calculator is a guide that is not rigidly applied and is used in order to reduce the maximum section 24G fine amount of R5 million to an appropriate fine based on applicable impacts resulting from the unlawful commencement activity/ies on the receiving environment. Each section 24G administrative fine is determined on its own merit and is dependent on the information provided in the application, as well as on appeal.

I have taken into account relevant case law, indicating that a decision-maker, informed by policy guidelines, must exercise his discretion with an open mind. Policies should therefore not be elevated into rules that are considered to be binding with the result that no discretion is exercised at all.

I have also taken into account consistency of the administrative fine with other fines on activities without authorisation by appellants with similar circumstances as in this case. However, in this case the fine determined on appeal is much lower than similar cases.

The fine calculator is a predetermined calculator designed by the National Department of Environmental Affairs for use by the competent authority when determining the administrative fine for an application submitted in terms of section 24G of the NEMA. As mentioned above, the fine

calculator was utilised as a guide in determining the fine amount. The S24G fine calculator distinguishes between the following two categories of offenders:

- o Category 1 offenders are companies, parastatals and government departments.
- o Category 2 offenders are individual persons.

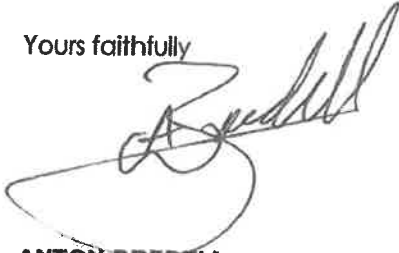
An amount of R625 000-00 was determined by the fine calculator for Category 1 offenders and R25 000-00 for Category 2 offenders for this application. The calculation of the administrative fine is based on the fact that the appellant in this matter is a Category 1 offender. The initial fine of R625 000-00 determined by the fine calculator was reduced by the decision-maker to R125 000-00.

Although the appellant is a Category 1 offender and apart from the fact that the appellant is a small farmer, I took the following factors into account :-

- o The appellant is registered as a business in accordance with the requirements of the Department of Agriculture, in order to qualify for the grant from that department.
- o The appellant is not a repeat offender and there are not any previous offences that have been committed by the appellant as far as I am aware of.
- o The appellant co-operated with the environmental authorities by submitting a section 24G application.
- o The unlawful clearing of indigenous vegetation on Portion 73 of Farm Klein Dassenberg has come about due to the innocent ignorance of a small farmer, rather than large entities having sufficient resources and capacity to identify and comply with legal obligations, whilst smaller businesses and individuals may genuinely be unaware of certain legal requirements and find it more difficult to keep abreast of rapidly changing environmental legislation. Law abiding small farmers should rather be accommodated if an insignificant mistake happens.
- o An excessive administrative penalty fine, will knock the small operation to such an extent, that it will unavoidably lead to downscaling and a loss of jobs.
- o The whole agricultural sector is currently under severe financial stress due to the intense and extended drought. Small farmers are starting to go under. An excessive penalty would handicap this small industry and jobs will come in jeopardy.
- o The cleared area was heavily infested with invasive species and had largely been transformed.
- o The area does not contain sufficient indigenous species to qualify as intact and has low recovery potential.
- o The area that had been cleared had not been ploughed or cultivated subsequent to submitting a section 24G application.
- o The appellant is an emerging female farmer who is 100% BEE compliant and providing a service to the local community.

- o It is evident from the financial information provided that the appellant is operating at a loss without the grant provided by the Department of Agriculture and that she is not financially in a position to pay the fine as originally imposed by the decision-maker. However, the payment of the administrative fine in instalments may be arranged with the Department.

Yours faithfully



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

DATE: 16/4/2018

cc. Mrs Z Toefy

Sub-Directorate: Rectification

Fax: (021) 483 4033

