



14/3/6/C1/5/0384/19

Mr L van der Westhuizen
Wagendrift Lodge (Pty) Ltd
24 Hoep-Hoep Street
STELLENBOSCH
7600

Dear Mr van der Westhuizen

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 CLEARANCE OF VEGETATION AND EXCAVATION OF TRENCHES WITHIN A FLOODPLAIN, FARM WAGENDRIFT NO. 257, LAINGSBURG

Your appeal lodged against the administrative fine issued by the Department of Environmental Affairs and Development Planning on 20 December 2018, refers.

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 vary the decision of the delegated officer and partially uphold your appeal.

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 R15 000-00 (fifteen 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, 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: **S24G00223**

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.:	S24G00223

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 Shafeeq Mallick (Tel: 021 483 2991, Fax: 021 483 4033/2704 and Email: shafeeq.mallick@westerncape.gov.za) and quote the abovementioned reference number to ensure that the competent authority 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 payment of the administrative fine is received and/or no arrangement of the fine payment is made with the Department 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.

The appellant must also, in writing, within 14 (fourteen) calendar days of the date of this appeal decision notify all registered Interested and Affected Parties ("I&AP's") of the outcome of the appeal and the reasons for the decision.

REASONS FOR THE DECISION:

The following reasons are applicable to partially uphold your appeal and vary the quantum of the administrative fine:

The 2016 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 follows:

- The Social Benefit Index was rated in the EIA Report that "**The activity provides some social service / infrastructure to the affected community**". South Africa is currently experiencing economic difficulty. This, in conjunction with the drought currently being experienced in the Western Cape makes job security increasingly difficult. The appellant stated that the activities were motivated by the fact that he had plant fodder and use his allocated irrigation water, to feed his livestock and ensure the continued sustainability of the farm and protect the jobs of the farmworkers. I conclude that the farm provides some social service to the surrounding community in the number of jobs it provides.
- 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 activity and that in fact it increased the economic viability of the farm through its ability to feed the livestock.
- The Biodiversity Impact Index was rated that "**The activity could give rise to localised biodiversity impacts**". I conclude that the activities occurred within an area that is mapped as a Critical Biodiversity Area ("CBA"). However, due to overgrazing and increased human activity, the area has been transformed and is currently covered by Western Karoo

Shrublands. This vegetation type is classified as least threatened, and therefore only resulted in local biodiversity impacts.

- The trenches were excavated to prevent flood water washing away the gravel road between the low-water bridge and the entrance gate to the Wagendrift farmstead and the lodge.
- I am satisfied that the impacts associated with the trench is within acceptable limits.
- 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 heritage value of the area**". The motivation for this rating is that the cleared area is being used to cultivate fodder for the livestock which is in keeping with an agricultural landscape.
- The Pollution Impact Index was rated that "**The activity will not give rise to any pollution**". The motivation for this rating is that activities did not generate any waste that required disposal.

The activities occurred within an area that is mapped as a CBA. However, due to overgrazing and increased human activity, the area has been transformed and is currently covered by Western Karoo Shrublands. This vegetation type is classified as least threatened, and therefore only resulted in local biodiversity impacts.

The trenches were excavated to prevent flood water washing away the gravel road between the low-water bridge and the entrance gate to the Wagendrift farmstead. The area is being used to cultivate fodder for the livestock which is in keeping with an agricultural landscape.

I particularly want to emphasize the following reasons contributing to an informed decision to deviate from the recommended administrative fine. Reference to some of my reasons has been made above.

Several Karoo farms and towns including Laingsburg, Beaufort West and Prince Albert, as well as neighbouring farms and towns in the Northern Cape Province, are in the grip of a water crisis and experiencing one of the worst droughts in 30 years. The drought has been ongoing in the region for more than four years and despite being a summer rainfall area, there has been very little rain. These farms form an important part of the regional economy and are important for job creation and job security. These farmers are committed to saving the jobs of their staff and are struggling to make ends meet.

The Western Cape Minister of Agriculture visited Laingsburg farmers in January 2019 to engage on drought issues and the Western Cape Department of Agriculture issued aid to the value of R 8.3 million a month in drought support to 586 farmers in the Central Karoo and will continue to provide

support in the region, which is currently still experiencing severe drought conditions, to ensure that the rural economy and job creation and security are protected.

Due to the ongoing drought and water shortage, the Gift of the Givers also assisted the drought-stricken Laingsburg area with the distribution of water.

Agri Western Cape also informed in mid September 2019 that the cattle farmers in the Central Karoo is still dependent on drought support. The situation is still the same today.

As stated in the recommendation of the Appeals Administrator, the S24G 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 in the 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 especially taken into account the current economic climate in South Africa in conjunction with the significant consequences of the recent drought in the Western Cape Province, as well as in other provinces, which acts as a significant impediment to job creation and job security, particularly in the farming communities as mentioned above.

The calculation of the administrative fine is also based on the fact that the appellant in this matter is a Category 1 offender. The fines for individuals are excessively less in comparison with Category 1 offenders for the same offence. 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 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. He has also requested assistance with flood damage from my Department after which the Department issued him with a Compliance Notice. However, I wish to advise the appellant to approach in future an environmental assessment practitioner and/or the Department of Environmental Affairs and Development Planning for advice prior to

commencement of an activity/activities on the farm which may require an environmental authorisation in terms of the National Environmental Management Act, 1998 ("NEMA").

- o An amount of R780 000-00 was spent on flood damage and R150 000-00 on consultants to manage his application with the Department. An excessive administrative penalty fine, may knock the operation of the farm to such an extent, that it will unavoidably lead to downscaling and a loss of jobs although there are only four permanent employees.
- o The farm has limited economic potential and there are only four permanent employees and not 50.
- o Given the geographical aspects of the farm in general, as well as the relatively degraded state of the cleared area, the competent authority and Appeal Administrator considered the deviation of the fine.
- o The landowner was "forced" to clear vegetation in order to feed his livestock. The agricultural lands used for grazing washed away in 2014 and as a result of the drought, the landowner cleared the vegetation to use his allocated irrigation water to plant fodder for his livestock. The cleared area was mostly disturbed next to the farm yard as a result of the trampling and overgrazing over the years. This area was then used to substitute the area damaged and destroyed in the floods.
- o The appellant applied for cancellation of the fine as an invitation for assistance with the flood damage was done by the landowner himself. However, subsections 24G(1)&(4) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") determine that a person who has commenced with a listed activity without an Environmental Authorisation must pay an administrative fine, which may not exceed R5 million and which must be determined by the competent authority. The administrative fine must therefore be paid, regardless of whether the appellant has made retrospective application for an Environmental Authorisation.

I have further noted that the administrative fine was calculated as R625 000-00. The geographical location and harsh environment resulted in challenging farming conditions. This directly limited the economic potential of the farm. In addition, the cleared area was over grazed by livestock and heavily impacted on by human activity resulting in a degraded environment. Due to these key factors, the administrative fine was deviated from and lowered to R50 000-00. After considering all the above factors, relevant documentation and the recommendation, I am of the view that a deviated fine of R15 000-00, is an appropriate fine.

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

Yours faithfully



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

DATE 8/10/2019

CC: (1) Mr N Hanekom
(2) Ms H Booysen

(Eco Impact)
(DEA&DP: Financial Accounting)

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