



REFERENCE: 14/3/6/C2/7/0416/19

Mr Johannes Jurie Klue
Avondrust Boerdery Bk
P.O. Box 1
KLAARSTROOM
6932

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Fax: 086 292 1033
Email: avondrust@pawireless.co.za

Dear Mr Klue

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 CONSTRUCTION OF AN IN-STREAM DAM AND INFILLING / BLOCKING OF A WATERCOURSE ON FARM 178, KLAARSTROOM, PRINCE ALBERT

1. Your appeal lodged against the administrative fine issued by the Department of Environmental Affairs and Development Planning on 14 May 2019, 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 partially uphold your appeal and vary 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 **R100,000** (one hundred 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: **S24G00230**
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)

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

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.: **S24G00230**

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 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.
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.
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:**

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 vary the decision of the decision of the delegated officer:

- 8.1 The S24G administrative fine imposed on you 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 an S24G administrative fine, which may not exceed R5 million, as determined by the competent authority.
- 8.2 The s24G administrative fine is determined using the 2017 calculator developed by the National Department of Environmental Affairs. The calculator comprises of various indices which include Social Benefit; Socio-Economic Impact; Biodiversity Impact; Sense of Place &/ Heritage Impact Index; and Pollution.
- 8.3 The 2017 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:
 - 8.3.1 The Social Benefit Index was rated in the EIA Report that "**The activity provides no social service / infrastructure to the affected community**".

I conclude that the farm does in fact provide some social service to the surrounding community with its provision of employment opportunities to Klaarstroom. The Social Benefit Index is related to **"The activity provides some social service / infrastructure to the affected community"**.

The motivation for rating is based on the fact that South Africa has been experiencing economic difficulty. This, in conjunction with the ongoing low rainfall in the Karoo area makes job security increasingly difficult. The appellant stated that the activities were motivated by the fact that water supply is extremely limited and the dam and its expansion was required to enable increased production and to provide drinking water for the livestock on the farm which ensures the continued sustainability of the farm and protect the jobs of the farmworkers.

- 8.3.2 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 increase production and provide sustainable water supply to the livestock.

- 8.3.3 The Biodiversity Impact Index was rated that **"The activity could give rise to localised biodiversity impacts"**.

The activities occurred within an area that is mapped as a critical biodiversity area ("CBA"), however ground-truthing could not support the CBA classification. The vegetation on the site can be classified as Price Albert Succulent Karoo which has a conservation status of 'Least Threatened'. The Sub-directorate: Environmental Appeals Management note that the majority of the impacts on the biodiversity and the aquatic system of the unnamed stream occurred during the initial construction of the dam.

Only a small amount of vegetation has been lost due the scrubbing of the dam and the increase of the dam wall by 2m. Rehabilitation measures have been included for the area impact on by the expansion of the dam.

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

- 8.3.4 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"**.

I am satisfied that a dam is in keeping with an agricultural landscape.

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

I am satisfied that the activities did not generate any waste that required disposal.

- 8.4 Farm Avondrus is a functioning farm. I am satisfied that the correct category of applicant was applied in the calculation of the fine.

The S24G Fine Regulations, 2017 and the S24G calculator 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 any body 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. This guideline, like the indices in the fine calculator, is not rigidly applied, and there would thus be nothing preventing an applicant from putting up factors relating to its personal circumstances, or preventing the Department from taking these into account in deciding the quantum of the fine.

Avondrus Boerdery, is registered as a corporation and operates for financial gain. The S24G application was submitted on behalf of Avondrus Boerdery for the expansion of the dam in order to increase production and thus has the potential to increased profits.

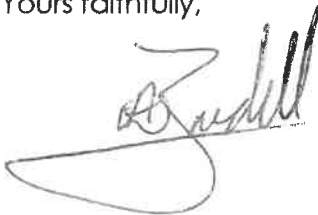
- 8.5 The S24G Fine Regulations, 2017 and the S24G calculator states that Administrative Fines must be calculated using the fine calculator approved by the Minister in accordance with regulation 4(1)(4) of the S24G Fine Regulations, 2017. Even though the calculator is limited to 4 variables, other factors are taken into consideration when the fine is determined, which include, but not limited to compliance history. The original calculated fine was R625 000 but the Department deviated the fine to R250 000. Thus, the assertion that the fine calculator was 'unlawfully used' is unfounded.
- 8.6 I note that the you only commenced with the expansion of the dam. However, the expansion of the dam required an Environmental Authorisation ("EA") prior to any physical activities taking place. The only available remedy to rectify the commencement of activities without a requisite EA is to apply in terms of section 24G of NEMA.
- 8.7 The appellant was only responsible for the scrubbing and increasing the dam wall by 2m. This resulted in only a small amount of natural vegetation being lost.
- 8.8 The area impacted upon by the expansion of the dam does not comprise of a CBA.
- 8.9 Ground-truthing confirmed that the vegetation on the site can be classified as Price Albert Succulent Karoo which has a conservation status of 'Least Threatened'.
- 8.10 The majority of the impacts occurred during the construction of the dam which was undertaken by the previous owner of the farm.
- 8.11 The impacts of the appellant's subsequent expansion of the dam are limited and localised.

- 8.12 Rehabilitation measures for the area impacted by the expansion of the dam have been proposed by the appellant and will implemented.
- 8.13 The dam is in keeping with an agricultural landscape.
- 8.14 The geographical location and harsh environment results in ongoing challenging farming conditions. This directly limited the economic potential of the farm.
- 8.15 The activities were motivated by the fact that water supply in the Karoo is extremely limited. The dam and its expansion was required to enable increased production and to provide drinking water for the livestock on the farm.
9. You were only responsible for the expansion of the dam and not the initial construction. Ground-truthing of the area also confirmed that the area does not comprise of a CBA and vegetation present on the site can be classified as Price Albert Succulent Karoo which has a conservation status of 'Least Threatened'. Due to these key factors, the administrative has been deviated from and lowered to R100 000.

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: 12/9/2019

Copied to:
(1) Ms J Ebersohn
(2) Ms S Msila

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

email: janef@ecoroute.co.za
email: Siposake.Msila@westerncape.gov.za



REFERENCE NO: 14/3/6/C1/5/0384/19

Adv. Charmaine Maré
Directorate: Environmental Governance
Western Cape Department of Environmental Affairs
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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 CONSTRUCTION OF AN IN STREAM DAM AND INFILLING / BLOCKING OF A WATERCOURSE ON FARM 178, KLAARSTROOM, PRINCE ALBERT

Your responding statement lodged with regards to the appeal lodged against the section 24G administrative fine issued on 14 May 2019, 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).

Your interest in the future of our environment is appreciated.

Yours faithfully,

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

DATE: 12/9/2019

Copied to:
Ms Zaidah Toefy (Sub-directorate: Rectification)

Email: Zaidah.Toefy@westerncape.gov.za