



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

The Owner
PO Box 186
LADISMITH
6655

Tel: 082 558 9779
email: mlswart@telkomsa.net

Attention: Mr Matthys Swart (Snr)

Dear Sir

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 INSTREAM DAM AND FARM SHED ON PORTION 73 OF THE FARM BUFFELSKLOOF NO. 97, LADISMITH

1. Your appeal lodged against the administrative fine issued by the Department of Environmental Affairs and Development Planning on 02 July 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 **R40 000** (forty 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: **S24G00257**

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.: **S24G00257**

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 During the EIA process it was determined that the expansion of the two existing off-stream dams on the Remainder of Portion 64 of the Farm Buffelskloof No. 97, Ladismith did not exceed the threshold of 50 000 m³, and as such, Listed Activity 41 in GN R. 544 (Listing Notice 1 of 2010) was not triggered.
- o The area has experienced a below-normal rainfall over the last 4 years resulting in a drought.
- o The drought has resulted in financial strain and led to the retrenchment of 15 permanent employees.
- o The activities were undertaken to ensure the continued financial viability of the farm and to secure jobs for the future.

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

- 8.2.1. 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.

8.2.2. The administrative fine calculator is based on the following indices (under Section C: Quantum of the Section 24G Fine of the NEMA Section 24G Application) that were informed by the Environmental Assessment Practitioner on the Section 24G EIA Report, as follow:

- The Socio-Economic Impact Index –
The Socio-Economic Impact Index was rated that *"The activity is not giving, has not given and 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 dam and shed on the farm. The construction of the additional dam increased the farm's water storage capacity which will assist in the continuation of the farm's agricultural activities and decreases the risk of additional job losses.

- Biodiversity Impact Index –
The Biodiversity Impact Index was rated that *"The activity is giving, has given or could give rise to localised biodiversity impacts"*.

The new dam and farm shed have localised impacts on the aquatic ecosystem of the Buffelskloof River.

I conclude that the impacts of the dam and farm shed are 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 / or does not negatively impact on the affected area's sense of place and / or heritage"*.

The motivation for this rating is that dam and farm shed blends in with the surrounding agricultural landscape.

I conclude that the impacts of the dam and farm shed on the sense of place is negligible.

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

The only potential form of pollution is from hydrocarbon spillages at the farm shed. However, these impacts can be adequately mitigated and managed through the implementation of the Environmental Management Programme ("EMPr") and the recommendations of the Freshwater Specialist.

I conclude that the potential pollution impacts will be adequately mitigated and managed through the implementation of the EMPr and the recommendations of the Freshwater Specialist.

- 8.2.3. 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.

The Section 24G application was submitted on behalf of Mr Swart, as an individual, for the construction of the dam and farm shed.

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

- 8.2.4. The 2016 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.

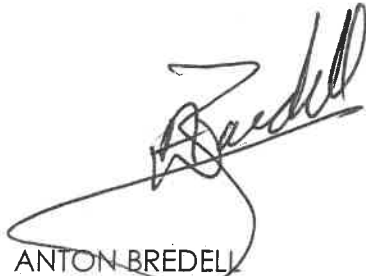
Having regard for the consequences of the unlawful commencement, together with considering an appropriate fine for the application, the Section 24G Administrative fine of R40 000 (forty thousand rand) is an appropriate fine.

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 BREDEHL

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

DATE: 10/9/2020

CC: (1) A Danhauser (EAP)
(2) Ms Z Toefy (Sub-Directorate: Rectification)
(3) Directorate - Financial Management

email: pieter@cornerstoneenviro.co.za
email: Zaidah.toefy@westerncape.gov.za
email: DEADP.Banking@westerncape.gov.za



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Adv. Charmaine Maré
Directorate: Environmental Governance
Western Cape Department of Environmental Affairs
and Development Planning
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8000

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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 INSTREAM DAM AND FARM SHED ON PORTION 73 OF THE FARM BUFFELSKLOOF NO. 97, LADISMITH

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

DATE: 10/9/2020