



**Reference No: 14/3/6/D2/30/0534/21**

Mr Petrus Willie Turvey  
PO Box 146  
Hoekwil  
**GEORGE**  
6638

Tel: 082 673 9194  
Email.: willieturvey@gmail.com

Dear Mr Turvey

**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 INDIGENOUS VEGETATION, REPAIR AND ENLARGEMENT OF A DAM AND THE ALTERING OF WATERCOURSES ON PORTIONS 17 AND 19 OF FARM AVONTUUR 166, HOEKWIL, GEORGE**

1. Your appeal lodged against the administrative fine issued by the Department of Environmental Affairs and Development Planning on 15 June 2021, 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 **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 **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: **S24G00281**  
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.: **S24G00281**

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 8339, 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. If no such payment is received 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:**
  - 8.1. I note the following:
    - 8.1.1. The excavation and removal of more than 5m<sup>3</sup> of soil from a watercourse to enlarge the existing dam on Portion 19 of the Farm 166 Avontuur.
    - 8.1.2. The expansion of the dam by approximately 10 345.17m<sup>2</sup>.
    - 8.1.3. The straightening of a stream channel.
    - 8.1.4. The infilling of wetland areas associated with the tributaries that were infilled during the clearance of alien invasive vegetation.
    - 8.1.5. The clearance of approximately 12.34 ha of indigenous vegetation.
    - 8.1.6. The vegetation that covered the cleared areas comprised of Carden Route Granite Fynbos which has a conservation status of Critically Endangered. However, the Department of Agriculture, Fisheries and Forestry, confirmed that the vegetation that was cleared comprised of alien invasive vegetation.
  - 8.2. The reasons outlined in the original administrative fine decision are applicable to the appeal decision and the following are additional reasons to **vary** the decision of the Department and **uphold** the appeal:
    - 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 ("EA"), must pay an Section 24G administrative fine, which may not exceed R5 million, as determined by the competent authority.

8.2.2. The Section 24G fine 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. The indices in the calculator are selected based on the information contained in the Section 24G Application Form and the EIA Report, i.e. the impacts resulting from the unlawful commencement of the activities on the receiving environment. Thus, the calculation of the Administrative Fine was not done in an arbitrary manner.

8.2.3. The 2017 administrative fine calculator is based on the following indices (under Section F: Quantum of the Section 24G Fine of the Final EIA Report) that were informed by your appointed Environmental Assessment Practitioner, Eco Route, as follow:

- o 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"*.

The clearance of indigenous vegetation, repair and enlargement of the dam, and the altering of watercourses will not arise in any negative socio-economic impacts. The dam provide water for agricultural purposes in an area zoned for agricultural use. The activity would result in minor positive socio-economic impacts as the success of the Macadamia orchards would support food production.

In addition, the applicant employs 14 permanent workers which will increase to 20 permanent workers within the next 2 years and an additional 100 seasonal workers for approximately 4 months of the year.

I conclude that there are no increased negative socio-economic impacts that resulted from the clearance of indigenous vegetation, repair and enlargement of the dam, and the altering of watercourses.

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

Both terrestrial and aquatic vegetation were removed for the repairs and enlargement of the dam, included the excavation of the cattle carcasses from the river. These activities resulted in a localised negative impact in biodiversity. This resulted in the loss of habitat and the modification of the natural flow of water.

Considering the impact of the unlawful clearance of indigenous vegetation, repair and enlargement of the dam, and the altering of watercourses on the receiving environment, I concur with the rating assigned by the EAP.

- o 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 activities are synonymous with an agricultural landscape and are not visually intrusive. The activities are also not located in close proximity to any cultural heritage site or areas of traditional value/significance.

I conclude that the unlawful clearance of indigenous vegetation, repair and enlargement of the dam, and the altering of watercourses on the sense of place, is negligible.

o 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 motivation for this rating was that the activities could result in sedimentation of downstream watercourses due to the clearing of indigenous vegetation, and the excavation and straightening of the river.

I conclude that the pollution impacts were low and were limited to only when the activities took place and are currently not taking place.

- 8.2.4. 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 application takes into consideration all factors, including the purpose of the unlawfully commenced activity as well as whether the property/farm is tied to a firm or just an individual. In this regard, whether the dam was for private use or for the benefit of the firm (in this case, the trust). Based on the information presented within the s24G application it was evident that the activities were linked to the Trust and not for individual gain as the applicant/appellant signed the declaration on behalf of the Turvey Broers Pty. Ltd.

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

- 8.2.5. The applicant/appellant is a first-time offender with no history with non-compliance. He adhered to all advice given by the Department and appointed the required specialists to inform the S24G and to assist with rectifying and mitigating negative environmental impacts and ensure all activities on the farm are legal.

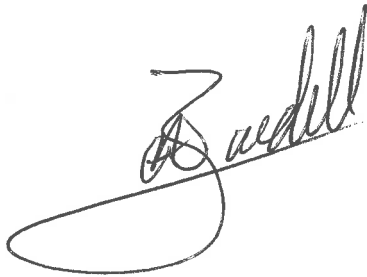
- 8.2.6. The cost for the S24G process and appointed specialists has amounted to R372 987.77.
- 8.2.7. The company was formed to assist the 3 farmers to build their own farming enterprise.
- 8.2.8. The previous owner engaged in cattle farming and discarded the carcasses by burying it in the river resulting in contamination of the stream.
- 8.2.9. You removed the carcasses from the river and straightened it in the process resulting in the commencement of a listed activity without the requisite EA.
- 8.2.10. You have commenced with the implementation of the appropriate mitigation measures and aims to implement continuous monitoring and management of the watercourse areas and the dam.
- 8.2.11. The significant capital layout that has been invested into the farm and the cost of and its financial implications is noted.
- 8.2.12. Covid-19 has resulted in large-scale unemployment globally and in South Africa. Cognisance is taken of the fact that the farm has spent R289 209.78 on salaries between January 2021 to May 2021 and the number of permanent employment opportunities on the farm will increase from 14 to 20 within the next 2 years. An additional 100 seasonal employment opportunities will also be available for 4 months of the year.
- 8.2.13. In the light of the above, I have thus varied the calculated fine amount of R625,000 to R250,000.
9. I note that the decision-maker applied her mind and was guided by the information contained in the section 24G Report, indicating that the section 24G Regulations were used as a guideline and was not rigidly applied.
10. Furthermore, the imposition of the section 24G Administrative Fine serves as a deterrent to unlawfully commencing with a listed or specified activity without an environmental authorisation in contravention of section 24F(1) of NEMA. The S24G Regulations provide the process to be followed and as such the Administrative Fine is appropriately determined in terms of the requisite section 24G process that was followed.
11. I note that this is your first offence, however ignorance of the law is not a defence. Your appointed Environmental Assessment Practitioner and legal representative is *au fait* with this.
12. Please note, that failure to pay the section 24G Administrative Fine will result in the referral of the matter to the National Prosecuting Authority for criminal prosecution. A person convicted of an offence in terms of section 49A(1)(a) is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine or such imprisonment.
13. 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.

14. I have discharged my decision-making powers when making this decision and I am thus *functus officio* in this regard. My decision is final and your only recourse, should you still be aggrieved by my decision, is to apply to the Western Cape High Court to review my decision.

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: 13/9/2021

Copied to:

- |                   |                                  |   |
|-------------------|----------------------------------|---|
| (1) Ms J Ebersohn | (EAP)                            | email: janet@ecoroute.co.za             |
| (2) Ms Z Toefy    | (Sub-Directorate: Rectification) | email: Zaidah.toefy@westerncape.gov.za  |
| (3) Ms H Booysen  | (Financial Management)           | email: DEADP.Banking@westerncape.gov.za |