



**MINISTER**  
**FORESTRY, FISHERIES AND THE ENVIRONMENT**  
**REPUBLIC OF SOUTH AFRICA**

**Reference:** LSA 226883

**APPEAL DECISION**

**APPEAL AGAINST THE QUANTUM OF THE ADMINISTRATIVE FINE ISSUED TO  
TRANSNET PORT TERMINAL IN TERMS OF SECTION 24G OF THE NATIONAL  
ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)**

Transnet Port Terminal

Appellant

Department of Forestry, Fisheries and the Environment

Competent Authority

**Appeal:** This is an appeal lodged against the decision taken by the Chief Director: Hazardous Waste Management & Licensing (CD: HWML) within the Department of Forestry, Fisheries and the Environment (the Department), on 04 November 2022, to issue an administrative fine in the amount of R5000.000.00 (five million rand) to Transnet Port Terminal (the appellant), in terms of section 24G of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) as amended, for the unlawful commencement of the construction of the hazardous waste storage in a lagoon facility situated on farm 1185 IS located at Transnet Port, Western Cape Province.

**APPEAL AGAINST THE QUANTUM OF THE ADMINISTRATIVE FINE ISSUED TO TRANSNET PORT TERMINAL IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)**

**1. BACKGROUND AND APPEAL**

- 1.1 The appellant conducts business on property known as farm 1185 IS Saldana, within the Western Cape Province. During or around 2010-2011, the appellant unlawfully commenced with the following listed activities:
- 1.1.1 Category B: Activity (1): Storage of hazardous waste in lagoon, excluding storage of effluents, wastewater or sewer.
  - 1.1.2 Category B: Activity (10): The construction of a facility for a waste management activity listed in category B of this Schedule.
- 1.2 The appellant became aware of the non-compliance and commissioned Sharon Jones as an environmental assessment practitioner (EAP) to assist them with an application in terms of section 24G to regularize the unlawful commencement of the aforementioned activities.
- 1.3 On 12 June 2018, the appellant submitted its application in terms of section 24G of NEMA to the Department of Environmental Affairs (DEA), which was accepted under DEA reference number: 12/9/11/L 18828123047/124G.
- 1.4 Section 24G (4) of NEMA provides and allows for an application to be made with the relevant Competent Authority (CA) to regularise the unlawful and unauthorised commencement of a listed and/or specified activity, subject to the payment of an administrative fine that may not exceed an amount of R5 000 000.00 (five million rand).
- 1.5 On 04 November 2022, the CD: HWML issued the appellant with an administrative fine of R5000 000.00 (five million rand). The fine was issued in terms of section 24G of NEMA read with sections 5, 19 and 20 of NEM:WA and the schedule to NEM:WA, 2008, which contains the List of Waste Management Activities that have, or are likely to have a detrimental effect on the environment in terms of GN. 921 dated 29 November 2013.
- 1.6 In issuing the said administrative fine, it was specifically indicated that the appellant had unlawfully commenced with the following activities listed under GN. 921 in the GG 37083 of 29 November 2013:

**APPEAL AGAINST THE QUANTUM OF THE ADMINISTRATIVE FINE ISSUED TO TRANSNET PORT TERMINAL IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)**

Listed Activity	Activity Details
Category B: Activity (1)	Storage of hazardous waste in lagoon, excluding storage of effluents, wastewater or sewer
Category B: Activity (10)	The construction of a facility for a waste management facility listed in category B of this Schedule

- 1.7 Section 24G(4) of NEMA, read with the Section 24G Fine Regulations published under GN 698 in the GG 40994 of 20 July 2017 (the 24G Fine Regulations), requires that the administrative fine levied as a result of the unlawful commencement of any listed activities must be paid in full before any CA is able to consider a section 24G application. Failure to pay the administrative fine imposed, may result in any offender being subjected to a prison sentence if convicted by a competent court.
- 1.8 The section 24G Fine Regulations set out the method to calculate the administrative fine; it provides for the procedure to be followed and the criteria to be considered in the determination of a fine pursuant to an application submitted in terms of section 24G of NEMA and any matters incidental thereto. Furthermore, it ensures that there is uniformity when evaluating and issuing section 24G fines across all relevant CAs.
- 1.9 In terms of regulation 4 of the Section 24G Fine Regulations, when determining the fine in terms of section 24G (4), the fine committee and/or relevant CA must take the following into account:
- (a) *the information submitted by an applicant in terms of section 24G(1)(b)(vii)-(viii);*
  - (b) *the completed application form including section C of Annexure, A, part 1 of which is to be completed by the applicant's environmental assessment practitioner;*
  - (c) *the impacts or potential impacts, including the cumulative impacts of the activity or activities namely-*

**APPEAL AGAINST THE QUANTUM OF THE ADMINISTRATIVE FINE ISSUED TO TRANSNET PORT TERMINAL IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)**

- (i) *the socio-economic impacts;*
  - (ii) *the biodiversity impact;*
  - (iii) *the impact on sense of place and/or heritage; and*
  - (iv) *any pollution and/or environmental degradation which has been, is being or may be caused by the activity or activities.*
- (d) *any technical or specialist advice or information on local knowledge received pursuant to Regulation 3(3) above;*
- (e) *the compliance history of the applicant, namely-*
- (i) *whether or not the administrative enforcement notices, including pre-notices where appropriate, have previously been issued to the applicant in respect of a contravention of section 24F(1) of the Act and/or section 20(b) of the National Environmental Waste Act;*
  - (ii) *whether or not the applicant has previously been convicted in respect of a contravention of section 24F(1) of the Act and/or section 20(b) of the National Environmental Management Waste Act; and*
  - (iii) *whether or not the applicant has previously submitted a section 24G application in respect of an activity or activities which commenced prior to the activity or activities that are the subject of the current application.*

1.10 In their decision to issue the administrative fine, the CD: HWML, stated the following:

*"In order to determine the amount of the section 24G fine, the Department was guided by the section 24G penalty calculator protocol and guideline developed for activities unlawfully commenced with, in terms of the NEMA as well as activities unlawfully commenced with in terms of the NEM: WA. The penalty calculator protocol and guideline were jointly developed by the then National Department of Environmental Affairs and the Provincial Departments. This mechanism was designed to assist in the determination of fines imposed in terms of Section 24G of NEMA, and accordingly is only used to guide decision making in relation to the amount of fines in respect of illegal activities listed in terms of the NEMA and NEM: WA. Based on site specific merits of the application as well as other relevant factors, the penalty calculator was used to calculate the fine imposed for the above mentioned unlawfully commenced activities".*

**APPEAL AGAINST THE QUANTUM OF THE ADMINISTRATIVE FINE ISSUED TO TRANSNET PORT TERMINAL IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)**

- 1.11 In this matter, the Fine Committee considered the above factors and all other relevant information pertaining to this application. The Fine Committee used the Section 24G fine calculator, which contains an embedded formula for the determination of the fines. The fine due by the appellant in terms of section 24G of NEMA was calculated to be R5 000 000.00 (five million rand). In compliance with section 24G of NEMA, the CD: HWML issued an administrative fine in the amount of R5 000 000.00 against the appellant. It is the value of the fine that has culminated in the present appeal.
- 1.12 On 09 December 2022, the Directorate: Appeals and Legal Review (Appeals Directorate), within the Department received an appeal from the appellant, challenging the quantum of the fine imposed. The appeal was lodged in terms of section 43(1) of NEMA, read with regulation 4 of the National Appeal Regulations, 2014 (2014 Appeal Regulations).
- 1.13 The above appeal was lodged approximately nine (09) days outside of the prescribed timeframe, hence an application for condonation was filed on 9 December 2022. The late filing of the appeal was subsequently condoned by the Acting Director of the Appeals Directorate on or around February 2023.
- 1.14 The CD: HWML provided the Appeals Directorate with a responding statement in respect of the grounds of appeal on 13 July 2023.
- 1.15 The appeal is broadly premised on the contention that at the time of commencement with the RO Plant, the activity in question was not a legal requirement, and that the amendments also does not list it as a requirement. Furthermore, that the appellant contends that there is no detrimental environmental impacts caused as a result thereof, and consequently therefore that the fine imposed is severe and disproportionate to the appellant's unlawful action. Therefore, the appellant requests that the fine be cancelled, alternatively the quantum of the fine be re-evaluated and reduced significantly.

**2. GROUNDS OF APPEAL, RESPONSES AND EVALUATION**

- 2.1 The appellant submits as follows:

**APPEAL AGAINST THE QUANTUM OF THE ADMINISTRATIVE FINE ISSUED TO TRANSNET PORT TERMINAL IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)**

- 2.1.1 A Basic Assessment (BA) and Water Use Authorisation (WUA) process was undertaken in May 2008 in support of the Environmental Authorisation (EA) and WUA of the Reverse Osmosis Project in Saldanha Bulk Terminal. DEA granted an EA with Ref.: (12/12/20/958) for the project on 17 November 2008 and a Water Use License (WUL) (Licence No: 19/G10M/H/282) was issued by the Department of Water Affairs (DWA) on 24 January 2012 for the discharge of brine (effluent) from the Reverse Osmosis (RO) plant into the ocean.
- 2.1.2 The EA for the project authorizes "A brine basin (up to 200m<sup>3</sup>) in which brine and dual media filter (DMF) backwash waters will be stored prior to it being released back into the sea".
- 2.1.3 During the construction and operations phase impacts were assessed in the BAR and mitigation measures were recommended. All potential impacts relating specifically to brine that were identified in the BAR were associated with the discharge of brine into the marine environment and not the storage of brine in a brine pond. As such, no operation phase impacts were identified for the storage of brine.
- 2.1.4 The Coastal Waters Discharge Permit (CWDP) that was issued in terms of the National Environmental Integrated Coastal Management Act, 2008 (NEM:IMCA) in March 2017, which authorizes Transnet to discharge approximately 4 400 m<sup>3</sup> of brine (effluent) per day into coastal waters and DMF into the municipal sewer. Following a compliance inspection conducted on 31 April 2014 by Environmental Management Inspectors (EMI's) from the DEA, Transnet was issued with a with a Notice of Intention to issue a pre compliance notice in terms of Section 31L of NEMA, as amended dated 11 April 2016, 2 years after the visit. TPT made representation on 25 July 2016 to the Department (DFFE).
- 2.2.4 The DFFE alleged in their Notice of Intention to issue a Directive that the construction of the brine storage pond / basin (a component of the RO plant) and storage of wastewater (brine) on the site plant between 2011 and 2014 triggered waste management activities in terms of Category B of GN 718 in Government Gazette No. 32368 of 3 July 2009, promulgated in terms of the NEMA. These activities are listed below: *Waste Act 59 of 2008, as amended (NEM: WA), being:*

**APPEAL AGAINST THE QUANTUM OF THE ADMINISTRATIVE FINE ISSUED TO TRANSNET PORT TERMINAL IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)**

Activity 4(1): The storage including the temporary storage of hazardous waste in lagoons.

Activity 4(11): The construction of facilities for activities listed in Category B of this Schedule (not in isolation to associated activity).

- 2.1.6 It is their view that the basis in which the administrative fine was imposed purports retrospective application of the law, in that, at the time of the commencement of construction of the RO Plant in accordance with the granted EA (DEA Ref.:12/12/20/958), the changes in respect of waste management activities in terms of Category B of GN 718 in Government Gazette No. 32368 of 3 July 2009 that would render the activity of both construction and operation unlawful, were not a legal requirement nor were they conditions of the EA.
- 2.1.7 Despite holding different legal views and interpretations on the matter, Transnet submitted a Section 24G application for the rectification of the alleged unlawful commencement and/or continuation of listed activities in terms of NEMA commencing with the application in 2017, with final submission made in July 2018.
- 2.1.8 TPT received correspondence on the 30/08/2018 relating to the receipt of the BA (Ref: 12/9/11/L180828123047/1/24G) from Deputy Director Chemicals and Waste Management informing TPT that a fine may be levied however no cognizance was given to the circumstances leading up to the unauthorized activity seem to be considered. Noting the activity requiring a WML commenced under the previous regulations (i.e., GN No. 718 of 3 July 2009), current changed regulations require the implementation of the norms and standards instead of a WML.
- 2.1.9 Notwithstanding the fact that TPT undertook the original assessment and received an authorization for construction, no activities changed between construction and operation have resulted in any impacts from the operation that were not already assessed. A fine of 5 million Rand indicates that the DFFE regards this as a major transgression with an impact that was not assessed, however there is no impact to the environment other than that already evaluated. The rectification of the facility was seen as administrative due to legislation amendments beyond the control of TPT with current regulations not requiring a WML.

**APPEAL AGAINST THE QUANTUM OF THE ADMINISTRATIVE FINE ISSUED TO TRANSNET PORT TERMINAL IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)**

**Response by the CD:HWML**

- 2.2 In response to the appeal, the CD: HWML notes all the first to fifth grounds of appeal and thereafter submits in respect of the rest of the grounds of appeal that:
- 2.2.1 The EA that was issued on 17 November 2008 authorised, amongst other things, the construction of the reverse osmosis desalination plant, including construction of the brine basin with a capacity of 200 cubic meters to store brine. The EA also included some operational conditions, e.g., conditions 1.10.6 and 1.10.7 sets certain conditions with regard to the dechlorination of brine; and discharge of the brine, namely that the design of the brine discharge diffuser must ensure optimum mixing of the brine with the surrounding seawater and that the temperature of the brine at the point of discharge must be monitored. Conditions 1.10 of the EA deals with management during the operational phase of the EA. The mitigation measures for the operational phase of the reverse osmosis desalination plant, as described in the BAR must be implemented.
- 2.2.2 The EA was issued during November 2008, which was before the commencement of NEM: WA on 1 July 2009. According to information provided, the activities only commenced in June 2010, which was after the commencement of NEMWA and the NEMWA listed activities. A waste management licence was therefore required for the construction of the brine ponds and the storage of waste in a lagoon. No transitional provisions exists that confirms that the EA that was issued prior to the commencement of the NEMWA is deemed adequate for purposes of the NEMWA requirements/ are deemed to be a waste management licence.
- 2.2.3 Whether a section 24G application can be submitted would therefore depend on whether the activity is still listed or similarly listed. Since the activity is still listed in Category B(1), Storage of hazardous waste in a lagoon excluding the storage of effluent, waste water or sewage, the activity is seen to be unlawful and a S24G application is required should Transnet wish to be in compliance with the latest legislation and avoid enforcement action.
- 2.2.4 Section 24G(4) of the NEMA states the following:

*(4) A person contemplated in subsection (1) must pay an administrative fine, which may not exceed R5 million and which must be determined by the competent authority, before the Minister,*



**APPEAL AGAINST THE QUANTUM OF THE ADMINISTRATIVE FINE ISSUED TO TRANSNET PORT TERMINAL IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)**

*Minister responsible for mineral resources or MEC concerned may act in terms of subsection (2)(a) or (b)*

The correspondence received indicating that a fine may be levied is therefore in line with the provisions of NEMA.

- 2.2.5 Current legislation still requires that a WML is needed for the storage of hazardous waste in a lagoon. The National Norms and Standards for Storage of Waste only applies, in this case, to the storage of hazardous waste in an area larger than 83m<sup>3</sup>. It is therefore not applicable to this situation.
- 2.2.5 The fine amount was mostly based on the fact that Transnet is a repeat offender in the contravention of legislative requirements in terms of NEMA and NEM: WA.

**Evaluation (Reasons for Decision)**

- 2.3 The appeal, as indicated in paragraph 1.15 supra, is premised on the challenge against the CD: HWML's decision to issue the section 24G administrative fine based on the reasons stated therein. The appellant furthermore, as an alternative, seek to challenge the value of the fine levied by the CD: WML and pleads for the reduction of the fine amount to a significantly lower amount. In my view, the central issue for determination in the appeal is whether the amount is disproportionate to the actions of non-compliance by the appellant, as they submit that the fine should not have been issued against them, and / or that based on their financial position, the administrative fine is disproportionate to the alleged offence under the circumstances.
- 2.4 I have considered the appellant's submissions regarding the retrospective application of the law, namely that at the time of the commencement of construction of the RO Plant in accordance with the granted EA (DEA Ref.:12/12/20/958), the changes in respect of waste management activities in terms of Category B of GN 718 in Government Gazette No. 32368 of 3 July 2009 that would render the activity of both construction and operation unlawful, were not a legal requirement nor were they conditions of the EA. In submitting an application in terms of section 24G of NEMA, the appellant conceded that they commenced illegally with the listed activities. The appellant cannot both admit and deny its conduct. I accordingly regard this issue as moot.

**APPEAL AGAINST THE QUANTUM OF THE ADMINISTRATIVE FINE ISSUED TO TRANSNET PORT TERMINAL IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)**

- 2.5 I note from the response of the CD: WML that the activities which the appellant undertook after the commencement of the NEMWA, were listed activities and triggered the application of GN 78 in the Government Gazette No. 32368 of 3 July 2009. I have perused and noted that the impact assessment were conducted as per page 35 of the final Basic Assessment Report (fBAR) regarding the alternative options for the disposal of brine by-products which included the "Evaporation Ponds, Piping brine to Saltworks, Evaporator and Crystalliser Plant, Discharging brine into Reclamation Dam. The option of discharging of brine into a dam was thus not considered viable based on future plans for the reclamation dam as well as likelihood of rendering the dam largely uninhabitable if brine is discharged into this enclosed area".
- 2.6 Furthermore, I note the conclusion on page 40 of the FBAR that with regard to the additional alternatives discharge pipeline locations outside immediate Bay, "taking into account that development in conjunction with engineering feasibility must consider social, environmental and economic costs and impacts, various off-side alternatives considered for locating the RO Plant infrastructure external to TPNA land were considered unreasonable, not viable and hence were not further investigated by Transnet." I have noted the conditions that were attached to the EA, including 1.10.6 and 1.10.7. to which the applicant would have been required to comply with during the operational phases of the project.
- 2.7 Considering the above, I am persuaded that subsequent to all this, the appellant became aware of the necessity of a WML at a later stage after 2011 which was also subsequent to the construction of the facility. I also took note that the appellant initiated a section 24G process on their own accord to the DEA on 17 February 2017, and then ultimately submitted the application to the correct CA, on 06 November 2018. It is important the appellant was proactive, and this was not a result of the CD:HWML directing the appellant to do so after having carried out a site inspection of their own.
- 2.8 By submitting a section 24G application to regularise the activities commenced with, the appellant acknowledged that they commenced with listed activities requiring a WML, prior to obtaining such necessary approval from the CA.

**APPEAL AGAINST THE QUANTUM OF THE ADMINISTRATIVE FINE ISSUED TO TRANSNET PORT TERMINAL IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)**

- 2.9 I have considered that to achieve consistency on the way administrative fines are determined nationally, the Ministerial Technical Advisory Body (MINTECH), approved the use of the section 24G fine calculator as developed by the Working Group (WG) IV Section 24G task team on 21 October 2011. This calculator was developed to be implemented as part of the Section 24G Standard Operating Procedure (SOP) developed by the Department on 20 June 2014, for use nationally. I note that the Section 24G SOP includes a calculator which assists CAs in the determination of fines to be levied in relation to the processing of section 24G applications.
- 2.10 The SOP expressly states that the S24G calculator serves as a guideline for the determination of the quantum of the fine to be imposed and that it should therefore not be rigidly applied. The Section 24G SOP further states that a decision maker may deviate from the administrative fine calculated based on, *inter alia*, the following reasons:
- 2.10.1 Aggravating circumstances such as blameworthiness (was the activity/offence committed in flagrant disregard of the law), non-compliance history (repeat or habitual offender), foreseeability and risk of environmental harm, and ignoring previous advice from the Competent Authority.
- 2.10.2 Mitigating circumstances, preventative measures, cooperation with the Competent Authority, self-reporting, immediate voluntary remediation and restoration and personal circumstances of the offender.
- 2.11 Evidently, once the S24G Calculator has provided a calculation of the fine to be imposed, the decision-maker may consider the aggravating circumstances and mitigating factors relevant to the matter, to assess whether there is a justification to impose a fine in an amount that is different to that determined by the Fine Calculator. It is clear to me that the issues for consideration are, among others, the nature and seriousness of the offence; the profile of company; whether there were any previous offences; any other EIA applications by company; and consistency of the proposed fine with other fines imposed on applicants for similar contraventions.

**APPEAL AGAINST THE QUANTUM OF THE ADMINISTRATIVE FINE ISSUED TO TRANSNET PORT TERMINAL IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)**

2.12 Evidently, the Fine Committee is required to do more than merely apply the amount of the fine as determined by the Fine Calculator. In addition, in cases where the Fine Committee determines that a deviation from the fine calculated by the S24G Calculator is justified, the justification for the deviation must be indicated in detail, in the section provided for in the S24G Calculator, titled: "*Committee Reasons for Deviation (only when relevant)*".

2.13 In my consideration of this matter, I find that there are mitigating circumstances relating to the appellant's conduct in this matter that warrant a slight deviation from the S24G Fine Calculator. These are as follows:

2.13.1 Although the appellant concedes that they unlawfully commenced with certain activities prior to obtaining a WML, I am cognizant of the fact that they took immediate voluntary remediation steps by appointing the EAP and thereafter submitted their section 24G application with the Directorate: Licensing. It therefore cannot be said that it was their intention to completely disregard the law. The extent of the legislative changes and different interpretations regarding the applicability of the relevant legislative provisions and requirements from the time the appellant applied for the EA in 2008 and when Pre-Compliance Notice was issued, could have been played a pivotal role in the steps taken by the appellant under the circumstances.

2.13.2 Notwithstanding of all the above, I must still consider the aggravating circumstances which are necessitated by the fact that the appellant is deemed to be a repeat contravener/offender as defined by regulation 1 of the S24G Fine Regulations and there is several evidence of enforcement notices that have been issued previously to the appellant in respect of a contravention of section 24F of NEMA or of any environmental legislation previously transgressed by the appellant which have been reported as follows:

- (a) A pre-compliance notice dated 29 November 2010 and a compliance notice dated 14 June 2011 was issued to Transnet. A fine of R560 000.00 (Five hundred and sixty thousand rand) was issued to Transnet on 05 May 2011 for Transnet Durban Container Terminal. The fine was paid on 03 October 2011.

**APPEAL AGAINST THE QUANTUM OF THE ADMINISTRATIVE FINE ISSUED TO TRANSNET PORT TERMINAL IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)**

- (b) Transnet Freight Rail submitted a Section 24G application referenced 12/12/20/2952 for the Transnet Emergency patch work and upliftment of the Cape mainline at Kamfersdam. A fine of R 50 000.00 (Fifty thousand rand) was issued and subsequently paid;
- (c) Transnet submitted a Section 24G application for a High Pressure Petroleum Pipeline (Reference: 14/12/16/3/248A) for the unlawful the construction of a High Pressure Petroleum Pipeline in Moreleta Spruit and a fine of R 1 Million (One million rand) was issued and was subsequently paid;
- (d) Transnet applied for a Section 24G (2016/17) for dredging activities at Coega River Mouth – Port of Ngqura. A fine of R200 000 was recommended but the fine amount of R1,000 000 (R1 million rand) was issued and subsequently paid.

2.13 I have also considered the appellant's submission that this would have an application of the law retrospectively based on the fact that the EA was already issued with such conditions that would have been imposed to the appellant.

2.14 I must stress that the aim of the section 24G fine is not punitive in nature; rather its purpose is to encourage compliance with environmental legislative prescripts when carrying out the listed/specified activities. This aims to ensure that the listed/specified activities are executed in an environmentally responsible manner.

2.15 Considering the above, although there is slight reason for a consideration of justifying a deviation from the quantum of the fine as calculated by the section 24G fine calculator, and that a reduction of the administrative fine issued to the appellant would have been justified, I am not convinced that a substantial deviation would be justifiable and serve the purpose of the relevant legislative compliance based on the previous contravention by the appellant which have been reflected in the report by the CD: WML.

### **3. DECISION**

3.1 In reaching my decision on this appeal, I have taken the following information into consideration:

**APPEAL AGAINST THE QUANTUM OF THE ADMINISTRATIVE FINE ISSUED TO TRANSNET PORT TERMINAL IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)**

- 3.1.1 The Section 24G application received by the Department on 12 June 2018;
  - 3.1.2 The administrative fine issued by the CD:HWML on 04 November 2022;
  - 3.1.3 The appeal filed by the appellant on 09 December 2022;
  - 3.1.4 The condonation decision dated February 2023, pertaining to the late filing of the appeal;
  - 3.1.5 The responding statement filed by the CD:HWML on 13 July 2023;
  - 3.1.6 The 2014 Section 24G SOP, and the Section 24G calculator included therewith;
  - 3.1.7 The 2017 Section 24G Fine Regulations; and
  - 3.1.8 The NEMA.
- 3.2 In terms of section 43(6) of NEMA, I have the authority, after considering the appeal, to confirm, set aside or vary the decision, provision, condition or directive or to make any other appropriate decision.
- 3.3 To grant appropriate relief, I must determine what is fair and just in the circumstances of a particular case. The various interests that might be affected by the remedy should be weighed up. This should at least be guided by the objective to address the wrong occasioned by the infringement; deter future violations; make an order which can be complied with; and which is fair to all those who might be affected by the relief. Moreover, the nature of this infringement will provide guidance as to the appropriate relief. This approach was followed by the Constitutional Court in the case of *Minister of Defence and Military Veterans v Motau and Others [2014] ZACC 18*.
- 3.4 Having carefully considered the abovementioned information pertaining to this appeal, including the mitigating factors outlined above, I proceed to **vary** the decision of the CD:HWML as follows:
- 3.4.1 The amount of the administrative fine issued against the appellant (R5 000 000.00), is to be paid as follows:
    - 3.4.1.1 The amount of R3.500 000.00 (Three million five hundred thousand rand only) is to be paid within 60 days from receipt of this decision; and
    - 3.4.1.2 The balance of the fine amount being R1,500 000.00, is suspended for a period of five (5) years from receipt of this decision, provided no further infringements occur within such a period.

**APPEAL AGAINST THE QUANTUM OF THE ADMINISTRATIVE FINE ISSUED TO TRANSNET PORT TERMINAL IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)**

- 3.4.1.3 In my view, this will serve as a deterrence to unlawfully commence with listed activities in future.
- 3.5 The appellant must note that the payment of the administrative fine is not an authorisation of the activities unlawfully commenced with. The consideration of the appellant's section 24G application must commence after the appellant has complied with the order referred to in paragraph 3.4 above.
- 3.6 Should the appellant fail to make payment within the timeframes specified above, the Department is directed to proceed with the appropriate law enforcement actions.
- 3.7 The appellant is directed to provide all registered interested and affected parties with a copy of this decision, within fourteen (14) days from the date of receipt hereof.
- 3.8 In arriving at my decision on the appeal, I have not responded to every statement set out in the appeal and/or responses thereto, and where a particular statement is not directly addressed, the absence of any response thereto should not be interpreted to mean that I agree with or abide by the statement made.
- 3.9 Should any party be dissatisfied with any aspect of my decision, they may apply to a competent court to have this decision judicially reviewed. Judicial review proceedings must be instituted within 180 days of notification hereof, in accordance with the provisions of section 7 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).



**MS B D CREECY, MP**

**MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT**

DATE: 13 (11) 2023