Centre *for* Environmental Rights
Advancing Environmental Rights in South Africa

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Dear Linda

CONCERNS ABOUT AND SUGGESTIONS FOR AMENDMENT OF SECTIONS 24F AND 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998)

Thank you for this opportunity to provide inputs into a proposed amendment of section 24G of the National Environmental Management Act, 1998 (Act 107 of 1998) (NEMA). It appears that the application of the rectification mechanism in s.24G has had unfortunate unintended consequences for environmental management, and it has been a thorn in the flesh of civil society organisations for some years.

The Centre for Environmental Rights spent the last few weeks collecting and collating comments and suggestions received from the Centre's wider stakeholder network on s.24G, and now attach those comments to this submission (**Annexure B**). Most of those who commented were representatives of non-government and community organisations (plus a few academics), but we have also had some comments from experienced environmental assessment practitioners and other consultants who work with s.24G on a regular basis. The individuals and organisations also represent large portions of the country, including Gauteng, Western Cape, KwaZulu-Natal.

Several recurring and remarkably consistent themes appear from these comments:

1. insufficient provision within s.24G to cater for different responses to different levels of fault. Intentional and repeat offenders are let off too easily, while innocent offenders are prejudiced by the criminal stigma that attaches to s.24G in the context of strict liability under s.24F;
2. administrative and criminal fines that are way too low to constitute a proper disincentive for non-compliance. There also seems to be a tendency for fines to be reduced on appeal. There is also general concern about a lack of transparency in the calculation of fines, giving rise to concerns about corruption;
3. the cynical abuse of s.24G whereby companies simply budget for the administrative fine and then proceed with contraventions of s.24F (and do not stop when caught out). There also seems to be a trend to rely on the emergency defence in s.24F(3) to criminal liability, followed by a s.24G application;

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4. the phenomenon of repeat offenders, and the need for a register of offenders, particularly to capture violators who commit s.24F offences in different provinces;
5. a perception that s.24G applications always end in authorisations being granted;
6. a perception that authorities are less keen to prosecute contraventions of s.24F where s.24G applications are submitted, effectively creating an escape route from criminal prosecution for violators;
7. a lack of clarity and insufficient communication to interested and affected parties about the process around the s.24G application and particularly public participation. There is also concern about the lack of consideration of alternatives in a s.24G application, as would be required in an EIA; and
8. generally speaking, most (but not all) participants felt that s.24G did serve some purpose, and were opposed to its abolition.

Against the background of these concerns, the Centre has drafted amendments to s.24F and s.24G for consideration by the Department. We attach as **Annexure A** our proposed amendments, and attach as **Annexure B** a marked-up version of s.24F and s.24G with explanatory notes.

We understand that our proposal requires officials in the competent authority to engage with the legal concepts of guilt and the different legal requirements for intention, negligence and innocence. However we do not believe that this is insurmountable, and can be addressed through internal guidelines.

We hope that you will give serious consideration to our proposal. Please let me know if you have any questions or requests in relation to this proposal – we have obviously given this extensive thought. Thanks again for the opportunity to provide input.

Yours sincerely

Melissa Fourie
Executive Director

24F Offences relating to commencement or continuation of listed activity

(1) Notwithstanding any other Act, no person may-
  (a) commence an activity listed or specified in terms of section 24 (2) (a) or (b) unless the competent authority or the Minister of Mineral Resources, as the case may be, has granted an environmental authorisation for the activity; or
  (b) commence and continue an activity listed in terms of section 24 (2) (d) unless it is done in terms of an applicable norm or standard.

(2) It is an offence for any person to fail to comply with or to contravene-
  (a) subsection (1)(a) ;
  (b) subsection (1) (b) ;
  (c) the conditions applicable to any environmental authorisation granted for a listed activity or specified activity;
  (d) any condition applicable to an exemption granted in terms of section 24M; or
  (e) an approved environmental management programme.

(3) It is a defence to a charge in terms of subsection (2) to show that the activity was commenced or continued in response to an emergency so as to protect human life, property or the environment.

(4) A person convicted of an offence in terms of subsection (2) is liable to:
  (a) a fine not exceeding R5 million or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment, if that person is a natural person; and
  (b) a fine not exceeding the greater of 10% of the person's annual turnover in the Republic and its exports from the Republic during the person's preceding financial year, or R10 million, if that person is not a natural person.

(5) When determining the penalty under subsection (4), a court must have regard all relevant factors, including the following:
  (a) the extent of the intention or negligence of the person who committed the offence in terms of section 24F (2) (a);
  (b) the severity of the offence in terms of its impact, or potential impact, on health, well-being, safety and the environment;
  (c) the degradation of the environment caused by the commission of the offence;
  (d) the behaviour of the person who committed the offence;
  (e) the monetary or other benefits which accrued to the convicted person through the commission of the offence;
  (f) the degree to which the person who committed the offence has cooperated with authorities;
  (h) whether the person who committed the offence has previously been found in contravention of this act or any specific environmental management Act; and
  (i) the amount of any administrative fine paid in terms of section 24G (3) (b).

24G Additional consequences of unlawful commencement or continuation of listed activity

(1) A person who has committed an offence in terms of section 24F (2) (a) must immediately cease the commencement or continuation of the activity or activities that constituted the offence and take reasonable measures to mitigate degradation of the environment caused by the commission of the offence and to prevent further degradation of the environment.

(2) A person who has committed an offence in terms of section 24F (2) (a) and who is unable to show, on a balance of probabilities, that the offence was not committed intentionally, must, to the satisfaction of the competent authority or the Minister of Mineral Resources, as the case may be, rehabilitate all degradation

of the environment caused by the commission of the offence, without the option of applying for an environmental authorisation in terms of subsection (3).

(3) A person who has committed an offence in terms of section 24F (2) (a) and who, on a balance of probabilities, is able to show that the offence was not committed intentionally but is unable to show that the offence was not committed negligently, and who has –

(a) complied with subsection (1); and

(b) paid an administrative fine determined by the competent authority in terms of subsection (7) below -

may be directed by the Minister, Minister of Mineral Resources or MEC concerned, as the case may be, either to:

(i) wholly or in part rehabilitate all degradation of the environment caused by the commission of the offence, without the option of applying for an environmental authorisation in accordance with subsection (5);

(ii) wholly or in part rehabilitate all degradation of the environment caused by the commission of the offence, and apply for an environmental authorisation in accordance with subsection (5); or

(iii) apply for an environmental authorisation in accordance with subsection (5).

(4) Subsection (3) applies to a person who has committed an offence in terms of section 24F (2) (a) and who is able to show, on a balance of probabilities, that the offence was not committed intentionally or negligently, except that such a person does not have to pay the administrative fine in subsection (3) (b).

(5) Where the Minister, Minister of Mineral Resources or MEC concerned, as the case may be, has directed a person to apply for an environmental authorisation in terms of this section, that person must:

(a) compile a report containing -

(i) an assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment of the activity, including the cumulative effects;

(ii) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for or impacts on the environment of the activity;

(iii) a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how issues raised have been addressed;

(iv) an environmental management programme; and

(b) provide such other information or undertake such further studies as the Minister or MEC, as the case may be, may deem necessary.

(6) The Minister or MEC concerned must consider any reports or information submitted in terms of subsection (5) and thereafter may-

(a) direct the person to rehabilitate all degradation of the environment caused by the commission of the offence in terms of section 24F(2) (a) within such time and subject to such conditions as the Minister or MEC may deem necessary; or

(b) issue an environmental authorisation to such person subject to such conditions as the Minister or MEC may deem necessary.

(7) The administrative fine payable in terms of this section may not exceed R10 million and must be determined by the competent authority having regard to all relevant factors, including the following:

(a) the extent of the intention or negligence of the person who committed the offence in terms of section 24F(2)(a);

(b) the severity of the offence in terms of its impact, or potential impact, on health, well-being, safety and the environment;

(c) the degradation of the environment caused by the commission of the offence;

(d) the behaviour of the person who committed the offence;

(e) the monetary or other benefits which accrued to the convicted person through the commission of the offence;

(f) the degree to which the person who committed the offence has cooperated with authorities; and

(h) whether the person who committed the offence has previously been found in contravention of this act or any specific environmental management Act.

(8) Except for a person mentioned in subsection (4), no application in terms of subsection (3) or any environmental authorisation issued in terms of subsection (6) (b) shall derogate from liability under section 24F(2).

(9) A person who fails to comply with subsection (1) or a directive contemplated in subsection (3) or (4) or who contravenes or fails to comply with a condition contemplated in subsection (6) (b) is guilty of an offence and liable on conviction to a penalty contemplated in section 24F (4).

24F Offences relating to commencement or continuation of listed activity

(1) Notwithstanding any other Act, no person may-
- (a) commence an activity listed or specified in terms of section 24 (2) (a) or (b) unless the competent authority or the Minister of Mineral Resources, as the case may be, has granted an environmental authorisation for the activity; or
- (b) commence and continue an activity listed in terms of section 24 (2) (d) unless it is done in terms of an applicable norm or standard.

(2) It is an offence for any person to fail to comply with or to contravene-
- (a) subsection (1)(a) ;
- (b) subsection (1) (b) ;
- (c) the conditions applicable to any environmental authorisation granted for a listed activity or specified activity;
- (d) any condition applicable to an exemption granted in terms of section 24M; or
- (e) an approved environmental management programme.

(3) It is a defence to a charge in terms of subsection (2) to show that the activity was commenced or continued in response to an emergency so as to protect human life, property or the environment.

(4) A person convicted of an offence in terms of subsection (2) is liable to:
- (a) a fine not exceeding R5 million or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment, if that person is a natural person; and
- (b) a fine not exceeding the greater of 10% of the person's annual turnover in the Republic and its exports from the Republic during the person's preceding financial year, or R10 million, if that person is not a natural person.

Note: The objective of this subsection (4) is to ensure a criminal fine for bigger companies that is a proper disincentive to contravention of s.24F. This penalty formulation in (ii) is based on s.59(2) of the Competition Act.

(5) When determining the penalty under subsection (4), a court must have regard all relevant factors, including the following:
- (a) the extent of the intention or negligence of the person who committed the offence in terms of section 24F (2) (a);
- (b) the severity of the offence in terms of its impact, or potential impact, on health, well-being, safety and the environment;
- (c) the degradation of the environment caused by the commission of the offence;
- (d) the behaviour of the person who committed the offence;
- (e) the monetary or other benefits which accrued to the convicted person through the commission of the offence;
- (f) the degree to which the person who committed the offence has cooperated with authorities;
- (h) whether the person who committed the offence has previously been found in contravention of this act or any specific environmental management Act; and
- (i) the amount of any administrative fine paid in terms of section 24G (3) (b).

Note: This provision is intended to give guidance to the court deciding an appropriate sentence (and of course for the parties involved in negotiations for a plea and sentence agreement). The particular factors are based on a combination of the factors for determining administrative penalties set out in s.59(3) of the Competition Act and the factors for criminal fines set out in s.52 of the National Environmental Management: Air Quality Act, 2004. Note, in particular, the reference to repeat offenders in (h), and the requirement that administrative penalties paid under s.24G should be taken into account in the case of negligent offenders (as appears below, intentional offenders never pay an administrative fine and cannot apply for rectification).

24G Additional consequences of unlawful commencement or continuation of listed activity

Note: We think it's important to take out the reference to "rectification" to change the perceptions around this section.

(1) A person who has committed an offence in terms of section 24F (2) (a) must immediately cease the commencement or continuation of the activity or activities that constituted the offence and take reasonable measures to mitigate degradation of the environment caused by the commission of the offence and to prevent further degradation of the environment.

Note: This provision creates a general obligation on any person that has contravened s.24F to cease what they're doing and to put in place measures not to make the damage worse. This is the "holding pattern" while decisions are made under the rest of s.24G. In the case of non-compliance with s.24G(1), EMIs can issue a further compliance notice.

(2) A person who has committed an offence in terms of section 24F (2) (a) and who is unable to show, on a balance of probabilities, that the offence was not committed intentionally, must, to the satisfaction of the competent authority or the Minister of Mineral Resources, as the case may be, rehabilitate all degradation of the environment caused by the commission of the offence, without the option of applying for an environmental authorisation in terms of subsection (3).

Note:

- *A person who intentionally commences or continues with a listed activity without authorisation cannot apply for rectification, and must simply cease and rehabilitate. This is to prevent the cynical use of s.24G to avoid conducting an EIA.*
- *Note that the onus is reverse one – it is the violator who has to prove to authorities, on a balance of probabilities, that the offence was committed without the intention to do so. This envisages representations made by the offender to the competent authority, who would make a decision on a balance of probabilities. That decision, like any administrative action, would be subject to appeal and review. Note, however, that this does not trigger concerns about reverse onuses in the context of criminal proceedings that could fall foul of the presumption of innocence in s.35 of the Constitution.*
- *Importantly, repeat offenders would normally fall into this category – once you've been caught by s.24G on the basis of negligence or innocence, it would be virtually impossible to argue that you fall into any other category but the intentional one.*
- *Because there is no rectification application available, there can be no administrative fine – the fine payable by the person will be a criminal fine levied by a court.*

(3) A person who has committed an offence in terms of section 24F (2) (a) and who, on a balance of probabilities, is able to show that the offence was not committed intentionally but is unable to show that the offence was not committed negligently, and who has –

(a) complied with subsection (1); and

(b) paid an administrative fine determined by the competent authority in terms of subsection (7) below - may be directed by the Minister, Minister of Mineral Resources or MEC concerned, as the case may be, either to:

(i) wholly or in part rehabilitate all degradation of the environment caused by the commission of the offence, without the option of applying for an environmental authorisation in accordance with subsection (5);

(ii) wholly or in part rehabilitate all degradation of the environment caused by the commission of the offence, and apply for an environmental authorisation in accordance with subsection (5); or

(iii) apply for an environmental authorisation in accordance with subsection (5).

Note: This provision incorporates the current version of s24G but makes it applicable only to parties who have negligently commenced activities without authorisation, i.e. should have known that there was a requirement to apply but failed to do so, or should have had better control over the subcontractors who illegally commenced

without the authorisation being in place. In this instance, the offender must stop, contain all damage and pay the fine before the authorities exercise a discretion whether to allow that party to apply for rectification.
This discretion is important to allow authorities only to accept applications in situations where authorisation is an actual possibility – where authorisation would never be granted, then the person would simply have to rehabilitate under (i) above.

(4) Subsection (3) applies to a person who has committed an offence in terms of section 24F (2) (a) and who is able to show, on a balance of probabilities, that the offence was not committed intentionally or negligently, except that such a person does not have to pay the administrative fine in subsection (3) (b).

Note: This provision makes the negligence provision applicable to "innocent" violators, but takes away the penalty. Innocent violators would be those who didn't know and couldn't reasonably have known that they required an authorisation, such as a member of a rural community without access to information about the legal requirements.

(5) Where the Minister, Minister of Mineral Resources or MEC concerned, as the case may be, has directed a person to apply for an environmental authorisation in terms of this section, that person must:

(a) compile a report containing -

(i) an assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment of the activity, including the cumulative effects;

(ii) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for or impacts on the environment of the activity;

(iii) a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how issues raised have been addressed;

(iv) an environmental management programme; and

(b) provide such other information or undertake such further studies as the Minister or MEC, as the case may be, may deem necessary.

(6) The Minister or MEC concerned must consider any reports or information submitted in terms of subsection (5) and thereafter may-

(a) direct the person to rehabilitate all degradation of the environment caused by the commission of the offence in terms of section 24F(2) (a) within such time and subject to such conditions as the Minister or MEC may deem necessary; or

(b) issue an environmental authorisation to such person subject to such conditions as the Minister or MEC may deem necessary.

Note: Wording changed for consistency with previous sections.

(7) The administrative fine payable in terms of this section may not exceed R10 million and must be determined by the competent authority having regard to all relevant factors, including the following:

(a) the extent of the intention or negligence of the person who committed the offence in terms of section 24F(2)(a);

(b) the severity of the offence in terms of its impact, or potential impact, on health, well-being, safety and the environment;

(c) the degradation of the environment caused by the commission of the offence;

(d) the behaviour of the person who committed the offence;

(e) the monetary or other benefits which accrued to the convicted person through the commission of the offence;

(f) the degree to which the person who committed the offence has cooperated with authorities; and

(h) whether the person who committed the offence has previously been found in contravention of this act or any specific environmental management Act.

Note: In this provision, the maximum administrative fine has gone from R5 million to R10 million. The factors are based on a combination of the factors for determining administrative penalties set out in s.59(3) of the

Competition Act and the factors for criminal penalties set out in s.52 of the National Environmental Management: Air Quality Act, 2004. This does not address problems of the lack of transparency regarding the determination of fines, and we would argue that this information should be made available to interested and affected parties voluntarily, i.e. without an application in terms of PAIA.

(8) Except for a person mentioned in subsection (4), no application in terms of subsection (3) or any environmental authorisation issued in terms of subsection (6) (b) shall derogate from liability under section 24F(2).

Note: This provision is included to ensure that neither intentional nor negligent offenders can escape criminal prosecution. However, in the case of negligent offenders, any administrative penalty paid must be taken into account in determining the criminal fine. Innocent offenders are excluded from criminal liability.

(9) A person who fails to comply with subsection (1) or a directive contemplated in subsection (3) or (4) or who contravenes or fails to comply with a condition contemplated in subsection (6) (b) is guilty of an offence and liable on conviction to a penalty contemplated in section 24F (4).

From	Comment
Koos Pretorius, FSE	It is about money. If the fine is less than the money lost due to a later start or no start at all, then the practice will continue. It also has to do with the reluctance from courts to make a developer level whatever is built. All the odds are in favor of doing the illegal action and rectifying it later on. Personally I don't think there is any need for it now. Everyone is aware of the need for EAs. If it has to stay, then the fine must be equal to the profit out of the development.
Susie Brownlie, EAP and member of the CER's Expert Panel	I question the need for a s24G application in its current form – to my mind, something done without permission should constitute a serious offence, and the penalty should be sufficiently onerous as to act as a major deterrent. Ideally, one wants to halt the perception that once you've effectively transformed a site you're guaranteed authorization, although it might take some time...since that provides an incentive to carry on transforming natural areas, potentially leading to irreversible / irreplaceable loss. I wonder if it would be helpful to consider different types of transgression – the first where developers simply go ahead with a listed activity and develop, knowing that asking for forgiveness is easier than asking for permission. They'd fall into the latter category where I'd see punishment being severe. Perhaps make it essential to 'undo' whatever development has taken place (i.e. remove structures/ infrastructure) and only then apply through the correct channels ito NEMA EIA regs. I'd see measures to restore/ offset (where restoration is unlikely to be successful) essential in these cases. The second type of transgression could perhaps be treated differently - where an authorization has been granted, an EMP has been prepared but not yet given The Nod by the Department, and clearing of a site has been initiated accidentally by a construction team prior to formal acceptance of that EMP. [I know of several situations where the right processes have been followed and applications made, but there's been insufficient 'control' over construction crew on site....]. These are, for the most part, genuine unintended events. Some sort of penalty, yes. But nothing like for the first type of transgression. A repeat offender of this type should face a far heavier penalty....
Charl de Villiers, consultant	I would like to see the default presumption of guilt excised from s 24G by making allowance for an alleged transgressor to motivate her/his actions on the basis of 'noodweer' as defined in s 24F(3) of the Act. I consider it unacceptable that the *audi alterem partem* principle only applies to individuals who have been prosecuted under the Act, and not to people who have fallen foul of the law due to circumstances that may not be of their own making or required an urgent response in the face of imminent harm to the environment, people or property. Space needs to be created for the regulator to exercise discretion in deserving cases, and for members of the public to be offered a reasonable opportunity to explain their actions without fear of being assaulted by a randomly wielded administrative bludgeon which, it seems, the general culture by which the EIA regulations and specifically s 24G are enforced. This particularly applies to agricultural contexts where landowners often have inherited unsustainble patterns of land use and whose strategies for dealing with the environmental consequences of this state of affairs may not be desirable, but in many instances leaves the affected person little option but to act in self-interest without sufficienlty interrogating the environmental consequences of that choice into account, or having the luxury of time to make that precautionary estimation. The effects of flooding immediately come to mind: drifts that are washed away, animals that

	cannot be watered or fed, crops, arable land and infrastructure that are damaged or destroyed, etc. The objective, surely, is to encourage, support and facilitiate a move towards more sustainable land use practices through reason, resources and good example. These things do not happen overnight. We may be able to bash individual non-compliant farmers into lawfulness, but hyper-'paraat', prosecutorial law enforcement in its own right is certainly not going to cultivate a positive attitude towards farming that voluntarily promotes and pursues ecosystem resilience and sustainable rural development. Maybe a 'three-strikes-and-you're-out' policy is what is needed, but at least the first point of engagement between the state and alleged transgressor should be as neutral as possible, aimed at establishing facts, motives and effects, and helping to find solutions to difficult problems, rather than automatically reaching for the metaphorical ticket book and ballpoint pen in a leering flush of Schadenfreude. Also, administrative fines should be proportional to the irreversibility of environmental damage, its significance and the circumstances under which the unauthorised activity was undertaken. The calculation of the fines also need to be transparent and explicable, considerations that are entirely absent under the current dispensation. Directives i.t.o. s 28? Good suggestion, and especially if they can be applied in a non-punitive fashion. By all means, punish those who deliberately and obstinately do harm to the environment but, by the same token, demonstrate some understanding and flexibility where reason and reasonableness demand that.
Mark Botha, WWF	1. I think there should be a decision making framework to guide S24G – to limit the discretion of officials in their powers. Something along the lines of the decision hierarchy for offsets. Objective would be flushing out innocent errors, unforeseen consequences vs blatant disregard, flagrant flouting of ROD provisions etc. would need to think it through some more 2. It should link to post ROD mitigation actions – “post fact offsets” that are so substantial and costly that no one would use this as an excuse for no following proper process up front 3. Could also be a useful way to get offsets considered up front in developments – those developers that have put offsets in place could have a “presumption of negligence” clause waived… 4. Concur with the criminal fine approach vs. an administrative fine. There should be some guidance to separate the two streams, as I’m sure there will be cases where an admin fine would be sufficient for lesser offences. 5. S24G must turn out to be punitive in nature for the bulk of applicants, and the fines should be commensurate.
Hout Bay &Llandudno Environment Conservation Group	In principle, as a purely practical expedient, there is nothing exceptionable about a regularisation provision. In general it should not give rise to the *ex post facto* regularisation of any development or land use that would not have been authorised had authorisation therefor been sought before commencement with the relevant listed activities entailed therein. Any decision purportedly made in terms of s 24G(2)(b) authorising an environmentally unsustainable development or land use would be irreconcilable with the objects of the Act and liable, on that ground, to be impugned and set aside on judicial review. The obviously undesirable feature of the provision as it is currently formulated, however, is the subliminal incentive it provides to the competent authority - whether that be the Minister, the MEC or the Minister of Mines -to trade the giving of *ex post facto* environmental authorisation for much needed revenue in the form of administrative fines (albeit in a

	maximum amount five times less than the maximum fine provided in terms of s 24F(4) by way of criminal sanction for commencing with a listed activity without prior environmental authorisation). The difference is that an administrative fine goes directly into the coffers of the competent authority, while a fine paid by way of criminal sanction goes into the National Revenue Fund to be disposed of in terms of the national budget and the annual Division of Revenue Acts. The provision for an *ex post facto* regularisation of a listed activity commenced without the required prior environmental authorisation should not derogate from the criminal liability of the person who so commenced the activity without authorisation. In other words, the competent authorities should not be constituted as judge, jury and executioner in respect of criminal contraventions of the provisions of the Act and should be restricted to fulfilling their administrative function of ensuring that development and land use is environmentally sustainable. Section 24G, as currently worded creates an unwholesome confusion of the competent authorities' functions within the Act's statutory objectives. Dealing with the punitive consequences of contraventions of the Act should be left to the independent institutions constitutionally created for those purposes, namely the prosecuting authority and the courts. Section 24 (2A) should therefore be repealed and substituted with a provision something like this: 'Any application in terms of subsection (1) and any environmental authorisation issued in terms of subsection (2)(b) shall not derogate from the applicant's liability in terms of section 24F(4) for having failed to comply with, or having contravened section 24F(1)(a) or (b).' It is arguable that s 24G(2A), as currently worded, offends against the doctrine of separation of powers and is unconstitutional.
Nicole Barlow, ECA	One part of me is loath to advocate the complete abolition of the Section 24G process because it does at least afford the environment some justice, if the process is run correctly. …The Section 24G process is actually a tool that's used by the developer to develop in a sensitive area, especially if he feels he won't get authorisation from the outset. Bribes are paid by the developers to the officials and the development is inevitably allowed to continue. The defence of the developer has become known as the "scrambled egg" approach, they state the damage has been done so they might as well be allowed to continue and of course they quote at length all the jobs that will be lost, etc. The fines were ridiculously low when compared to what the developer stood to gain from his development continuing. I'd like to see certain conditions placed in the Section 24G regulations such as exclusions, if you build in a wetland, or in any really sensitive area, you cannot do a Section 24G, you go straight to illegal, demolition and rehabilitation. I'm not sure if this is feasible, but all Section 24Gs should be handled by the National Department of Environment, not that I think they are any better if you look at the RoD for the Pan African Parliament, but they might be a little more immune to the high levels of corruption than the provincial departments. Section 24G fines should not be negotiable, they should be so high that they actually serve as a deterrent. The fine should equate to 50% of the **total value** of the whole development, which essentially means that the development will have NO profit margin and the fine has to be paid upfront and cannot be appealed. My only problem with making it part of a criminal process is it means they have to go through court, not only is this time consuming and cumbersome due to the extreme problems at all courts at the moment, but then the decision is left with a judge who has no understanding of the environment and the consequences of what the developer has done. I've seen shocking decisions made by even the best and longest standing High Court Judges… The one problem is that many developers work across different provinces, which is also why I

	suggested the National department take over Section 24G's, because if you want to implement a system where you only get to make ONE mistake, and that if you've already had a Section 24G you can never submit another one, how do control that without a central system. The directors of companies should also be held personally accountable. They need submit the application under each directors Identity number, because the directors can dissolve one company, start another company and keep repeating these mistakes. If we go for a total abolition of the Section 24G process as it stands at the moment, then it has to be replaced with something better and stronger, you cannot remove it and leave this gaping hole where there was once at least some semblance of repercussion for a developer that broke the law. But, Section 24G as its currently written is weak, open to enormous levels of corruption, is not being enforced properly and the fines are so low they serve as no deterrent what so ever. I hope my layman's suggestions can assist.
Adv Tsheko Ratsheko, Johannesburg Bar	I have not been following on the implementation of section 24G (and have not seen the latest proposed amendments) but it appears that it remained an ex post facto authorisation - which was only an aspect of its purpose. All section 24G applications were generally approved once the administrative fine was paid. Section 24G(2)(a) authorises the Minister or MEC (after considering the report and payment of a fine) to direct persons to cease the activity and rehabilitate. This aspect of the section is not implemented (at least to my knowledge). Problems with this section is that: 1. Section 24G(2) is couched in permissive language – where it matters most ie execution of the decision: ..."upon payment of the administration fine not exceeding R1m, the Minister or MEC must consider the report and **thereafter may** (a) direct the person to cease....or (b) issue authorisation.. (proposal is to change it as follows...thereafter[may]must.. 2. We should then add a section which requires the Minister or MEC to publish reasons for either decision taken 3. I do not recall if guideline for calculating an administrative fine was ever a publish as a regulation. The calculation is not clear and the administrative fine must also be increased 4. Avoidance (See attached legal opinion) **Note: This legal opinion from senior counsel concludes that the disadvantages of applying for s.24G outweighs the advantages of doing so.**
Margie Donde	As far as I understand it 24G is used when someone does not know that what they were doing was illegal – i.e they did not know the law. • Section 24G fines should not be negotiable, they should be so high that they actually serve as a deterrent. The fine should equate to 50% of the total value of the whole development. Developers in our area build in the cost of the 24G if they get caught. Therefore it is not a deterrent – rather they use it as a way to do what they want and if they get caught they have a process by which they can then become legal. • The directors of companies should also be held personally accountable • If you are in contravention once you should not be able to state ignorance a second time and they should then have to demolish the whole development • You should not be able to appeal the fine – we have an illegal cement factory in our area that has used the 24G process to continue their cement making – they do sidings for Gautrans- while they appeal the fine – this has now been going on for 3 years! • The development/ illegal activity should stop until all fines are paid and rectification is done
Aiden Beck,	I think we are seeing a lot of these original 24G obligations falling by the wayside in the

Oyster Bay Reserve	Mossel Bay Desalination Plant, that MEP has a concern with.
Paul Hoffman SC Director Institute for Accountability in Southern Africa	Surely the best medicine for the "gewraakte" section 24G is a good draft of euthanasia vanishing oil, administered liberally to its entire body until it disappears completely?
Angela Andrews, LRC	One of the issues is the fact that the fines are apparently not very high and are determined (I hear but need to check) by guidelines from DEAT or somewhere else where fines are worked out. I need to find out about this. The net effect is that provincial authorities feel that they don't have much say in the fines. In some of the more remote provinces I hear that there is a lot of bullying of officials by errant developers who use strong arm tactics and political pressures. It is estimated that in some provinces up to 15% of developments go through the 24G route. So NEMA is being completely undermined. Not sure what the solution is. Abolish 24G!!! Or make 24G go through the central government where there is less corruption. All this has to fit in to the NEIAMS strategy as well so I don't know why it is being dealt with in a piecemeal process.
Yolan Friedmann, EWT	The environmental legislation in this country must be the only case of 'ignorance of the law is not only a good excuse but allows you to be forgiven with the right paperwork...' by its very track record, S24g can be called a failure, even if its intentions could ever be said to be pure...
Rynette Coetzee, EWT	Indeed food for thought. I think there are too many people who are abusing the S24G system, by initiating development or any listed activity without the necessary permits, as they know they will most probably get away with an administrative fine. However, if the fine was linked to a crime (admission of guilt with a criminal record) they may think twice before actually embarking on such illegal trips. I am just thinking of the quarry on the Bronberg (where the Juliana's Golden Mole sole colony exists) and the fact that they are still doing whatever they please, irrespective of an administrative penalty and a mining ROD that was apparently only valid for five years. I am still trying to get to the bottom of this problem. In the mean time they are excavating into the habitat of these moles (listed as Vulnerable on the IUCN Red Data List) and no government authority wants to take action.
Patrick Dowling, WESSA	1. Does s24G fulfill some function? Is there a need for a mechanism to authorise illegal listed activities? Or should it just be abolished and rehabilitation be dealt with under a s28 directive (or activities stopped and a fresh EIA application be submitted)? Though there may well be instances when *bona fide* mistakes are made and regularization would be apt, the presence of this clause will unfortunately be exploited ito of easier to ask for forgiveness than permission. Would be better to review activities that trigger EIAs. 2. If so, in what circumstances should a violator be allowed to submit a rectification application? None. 3. Should a violator be allowed to submit more than one rectification application? No. 4. Should an authority have a discretion to accept a s24G application, or should all applications at least be processed? No discretion. Very minimum should be new process with I&APs (perhaps a shortened one) 5. What about that administrative fine – should this perhaps be in the form of a criminal fine imposed in terms of a plea and sentence agreement in a guilty plea? (which will at least give the applicant a criminal record)? Would be contradictory to spirit of amendment
Andrew Muir, Austen Smith	1. Does s24G fulfill some function? Is there a need for a mechanism to authorise illegal listed activities? Or should it just be abolished and rehabilitation be dealt with under a s28 directive (or activities stopped and a fresh EIA application be submitted)? I BELIEVE THAT S24G IS A VITAL PART OF THE ADMINISTRATIVE PROCESS. THE CRITICAL ISSUE IS TO BRING ALL POTENTIALLY DAMAGING DEVELOPMENTS / ACTIVITIES TO The ATTENTION OF THE AUTHORITIES. THEREFORE THE PROCESS SHOULD ENCOURAGE A GENUINE DEFAULTER WHO DIDN'T KNOW BETTER TO REPORT A MISTAKE TO THE AUTHORITIES AND TO HAVE THE MISTAKE ASSESSED. I DON'T THINK THE CURRENT MODEL PROVIDES ENOUGH ENCOURAGEMENT TO THE ACCIDENTAL DEFAULTER.

	2. If so, in what circumstances should a violator be allowed to submit a rectification application? A DEFAULTER SHOULD BE ENCOURAGED AND ASSISTED IN REPORTING NON COMPLIANCE AND SHOULD AUTOMATICALLY BE PENALISED, OR RATHER A LIGHT PENALTY FOR NON COMPLIANCE, IN THE FORM OF A SMALL ADMIN FINE SHOULD APPLY TO A FIRST TIME DEFAULTER. HEAVIER FINES CAN BE LEVIED AGAINST REPEAT OFFENDERS OR IN SITUATIONS WHERE MORAL WRONGDOING E.G. A MAJOR DEVELOPMENT WHICH A DEVELOPER SHOULD KNOW REQUIRES AUTHORISATION, IS APPARENT. 3. Should a violator be allowed to submit more than one rectification application? YES, GET THEM INTO THE SYSTEM WHERE THEY CAN BE PROPERLY ASSESSED AND DEALT WITH APPROPRIATELY. THE BALANCE NEEDS TO COME INTO THE MODEL TO PREVENT S24G BEING AN EASY ROUTE OUT. 4. Should an authority have a discretion to accept a s24G application, or should all applications at least be processed? ALL APPLICATIONS SHOULD BE PROCESSED BUT, THE OUTCOME MAY BE NO APPROVAL WITH AN REHABILITATION ORDER. AUTHORISATION MUST NOT BE A FAIT ACCOMPLI AND THERE NEEDS TO BE A STRENGTHENING OF THE MECHANISM TO PROVIDE FOR THE REHABILITATION PROCESS. 5. What about that administrative fine - should this perhaps be in the form of a criminal fine imposed in terms of a plea and sentence agreement in a guilty plea? (which will at least give the applicant a criminal record) Any other thoughts and particularly suggestions for improving s24G will be incorporated into a submission to DEA. THE ADMINISTRATIVE FINE SHOULD BE MINOR, IT SHOULD ONLY BE THERE TO ENCOURAGE THE CORRECT PROCEDURE AND TO PUNISH NON-COMPLIANCE. IF, ONCE THE ASSESSMENT HAS OCCURRED IT APPEARS THAT HARM HAS BEEN DONE THEN FURTHER PUNISHMENT MUST BE AVAILABLE AND MUST BE USED. THEORETICALLY THE HARM COULD HAVE BEEN AVOIDED THROUGH THE EIA PROCESS AND THE FACT THAT THE PROCESS WAS IGNORED MEANS THAT THE PERSON LIABLE MUST BE PUNISHED AS NECESSARY. THIS SHOULD BE IN THE FORM OF A PUNITIVE REHABILITATION ORDER WHICH SHOULD BE ADMINISTRATIVE AND NOT CRIMINAL. THUS AN INNOCENT WRONGDOER WOULD BE FACED WITH A LIGHT ADMIN FIN TO PROCESS THE APPLICATION AND, IF HARM HAS BEEN CAUSED, A FURTHER ADMIN PENALTY PROPORTIONAL TO THE HARM CAUSED. A WILFUL WRONGDOER WOULD AND MUST, ALSO FACE CRIMINAL PROSECUTION WHERE PUNISHMENT IS CALLED FOR BY THE CIRCUMSTANCES.
Mercia Komen	In a nutshell, I am proposing that transgressors be **severely fined**; that rehabilitation or remediation be funded by the transgressor; that the affected parties (or the environment where no one cares) are able to discern where the fine has been used to right the wrong in the receiving environment. The latest compliance and enforcement report indicates that almost every province deals with "illegal listed activities" as a prevalent crime. I surmise that this results in a great deal of unit's time being spent on functions which should be done by impact assessment and management. Consequently we create massive inefficiency. Suggestion: I do not say this lightly, but it seems more pragmatic for EMI's to assess the contravention, and follow the prescribed process for **contravention**. This should be a discretely separate process from the attempts to **rectify**. The transgressor should pay the penalty (and/or do the time) and then be required to place before the competent authority **two separate documents** - one the application document which would have been required for the development which now exists, and the other a rehabilitation plan for the development which exists. Placing both these documents as separate proposals before the competent authority reduce the tendency to assume that the development will/should be left intact.

Suggestion: I would also propose that the fine should be correlated with the value of the development. It is no deterrent to ongoing crime, or compensation for the resulting administrative burden for transgressors to be fined so low that it is a viable financial alternative to conducting the required process.
I am saying, for example, that if the development is valued at R 5 million, the fine should be R5 million where the **development will be retained.**
The State should then deploy that fine specifically in the area of the development and specifically to balance the negative environmental impacts on the Interested and Affected parties. This is not in place of what the transgressor may be required to do, but in addition to. It should be very clear to the I&AP how and where the penalty has been applied.
In the case where the development **will be demolished**, the R 5 million fine used in this example may be used to offset the remediation costs. I would hasten to add that the service provider should be appointed by the State for the portion of the rehabilitation that will be funded by the fine.
I take cognisance of the administrative burden my solution is placing on a finance function. I feel that Section 24 G application harm the I&APs twice over - and we need to take that into account, and it is the I&APs who need to KNOW that things have been set right.

My experience with 24G has the following frustrations:

1. The rectification option is generally assumed to be the final outcome. There is insufficient attention on the transgression, and the option to rehabilitate.
2. The process is often hurried, inadequately dealt with and the assessment of the impact minimised.
3. Public participation is poor - process is poorly communicated, the attitude of the transgressor /consultant is not conducive to engagement (as the deed is already done)
4. The authority to force the transgressor to rehabilitate must be clear, and there has to be willingness to go that far (and then be widely publicised)
5. On the one hand the REAL impacts are available, and should be reported in detail, including an evaluation of how the transgressor self-regulated. This will attest to the sense of accountability and responsibility of the transgressor and should be factored into the decision making. Someone who both transgresses and needs to be compelled to be environmental responsible cannot be regarded as civic-minded. On the other hand, the transgressor cannot fully report on impacts because some of the impacts will have irreparably destroyed environmental elements. The assessment in some ways needs to be MORE comprehensive, looking wider than the subject property.
6. Where the transgression is in keeping with the strategic/ spatial plans for the area or precinct, the focus needs to shift to cumulative impacts - to answer the question, would this development be consider "one too many". If this is not the case, the transgressor should be fined severely, and as discussed above, the fine used for a local project which will have a long-term positive impact on the local environment (a buy-back centre in an industrial area, a park for workers to enjoy in their breaks, establish an environmental centre in the nearest dormitory, etc.

There is the case of the **[name provided]** Lodge in the **[name provided]** Protected Environment. The provincial authority dropped the ball, but were reluctant to deny authorisation when the situation was forced into the S24G process. The consequence is a travesty of the law which provides for formally protection of special areas (NEM:PA). The **[name provided]** Protection Association is in court on this case - a typical S24G scenario of power and influence riding roughshod over the law. This is the example we need to prevent while still allowing a mechanism for those who are foolish and ignorant not to lose developments which are beneficial to society.

In this instance the developer convinced province that too much money had already been spent and that demolishing the lodge was not an option. Here the authority did not adequately evaluate the precedent being set, and how it was failing (would in the future be compromised...) to give effect to the NEM:PA. Sometimes an offset is not possible, and

	weighed against the long-term implications and trends, the only answer is severe penalties and the long road of rehabilitation. The great risk is that a spat of "bankruptcies" follow. It should then be clear that the conditions apply to a new owner, even where the owner is a financial institution. In this way, we will foster more attention to environmental law by all parties (including financiers), and need but a few costly examples to pave the way. I feel sure I have added nothing new. Thank you for the opportunity to at least feel empowered to do something about the issue.
Cara Stokes, consultant at CSEnvironmental	1. **Does s24G fulfill some function?** If there is a delay from the department side and the applicant had begun their EIA application, but just administrative action was not followed by the department in authorising the activity, and/ or if the activity had other major financial or environmental consequences if the project was not to go ahead immediately. Is there a need for a mechanism to authorise illegal listed activities, if the activity was conducted in a response to an emergency? Or should it just be abolished and rehabilitation be dealt with under a s28 directive (or activities stopped and a fresh EIA application be submitted)? Rehab should still be dealt with in terms of s 28 directive. 2. **If so, in what circumstances should a violator be allowed to submit a rectification application?** If it was in a response to environmental emergencies or public interest (This could include activities such as upgrading roads which are already existing or upgrading sewerage farms) or an exemption route was not explored/ or the EIA regulations have changed and limits which were previously adopted and are no longer adopted should now be deemed exempt from any 24G application due to the recent changes. 3. **Should a violator be allowed to submit more than one rectification application?** Yes, but the judgement of each 24 g should be based on its response to environmental emergencies or public interest, one town could be particularly bad and the mayor may be the person applying for the section 24G's. 4. **Should an authority have a discretion to accept a s24G application, or should all applications at least be processed?** Applications should be processed by a panel of respected environmental/ legal government professionals, where if blatant disregard for environmental matters concerning a particular project were obviously exercised and the violator cannot prove that they took any reasonable measures to ensure that environmental matters were considered the violator should be given a criminal record which can be plea bargained in terms of a community service sentence as well as a monetary fine which shall be partially used to fund a particular community project that the violator must engage in. The community projects must promote the interests of sustainability and show that fines are being used to promote the interests of sustainability and not otherwise used to promote individual interest. After 5 years a 24G applications should only engage emergency responses. If a violator is found to having had engaged in an activity the requires an EIA after a 5 year period (No emergency response can be proven) they should be charged in terms of section 24 and the EIA regulations where criminal sentences could be converted to sustainable community service and rehabilitation directives are issued or the judge orders the violator to follow any instructions given to them by the relative department involved in the 24G application.
Carolyn Schwegman, WESSA	s24G does not in any way seem to be a deterrent to those developers (including municipalities who do know the legislated EIA procedures) to 'fast track' a development seeking to legalise it once begun or completed. Not many applications have come across my desk but in almost every case the fine has been reduced by almost 50% on appeal by the applicant. This seems to trivialize the process.
Judith Taylor and Rachel Adatia, ELA JHB	**Does s24G fulfil some function?** Is there a need for a mechanism to authorise illegal listed activities? Or should it just be abolished and rehabilitation be dealt with under a s28 directive (or activities stopped and a fresh EIA application be submitted)? – I propose the latter **If so, in what circumstances should a violator be allowed to submit a rectification application?** – Dependant on the severity of the violation, in the case of blatant violations, the violator must pay all rectification costs and be disbarred from continuing **Should a violator be allowed to submit more than one rectification application?** - NO

	Should an authority have a discretion to accept a s24G application, or should all applications at least be processed? – They be processed **What about that administrative fine – should this perhaps be in the form of a criminal fine imposed in terms of a plea and sentence agreement in a guilty plea? (which will at least give the applicant a criminal record**) – Yes Regarding the fine - definitely should be a criminal fine, and I think it says a max of R1 million in the act - which seems very low to me! Should they not be fined in proportion to the cost of the development - a % of cost/expected profit?
Chrissie Cloete Obo Plettenberg Bay Community Environment Forum	Our experience of this has not been a positive one, particularly with the current drought situation and following the floods that we experienced in the Southern Cape in 2007/08. We believe that the S24G process is being abused by developers and some authorities as a loop hole to fast track their agendas and to avoid the delays associated with following the normally required processes. The Bitou area is currently faced with what we believe to be badly managed water resources and associated infrastructure which is impacting severely on our rivers, wetlands and estuaries. Much of this can be associated with fast tracked developments, including the installation of a desalination plant without proper studies being implemented and the abstraction of water in dry periods when rivers are running below the required reserve. In addition to this, bank stabilisation is taking place without a holistic approach, rocks are being dumped into the sea and estuary to prevent erosion and sea walls and gabions are being installed. When queries are made about these activities, we are told that the constructions are being done during/in response to "emergency" situations and following a S24G process. We believe that there should be appropriate financial penalties involved with following this process and that it should only be utilized during legitimate emergencies - this to be determined by a special committee/authority. Stricter penalties for unauthorised developments, such as having to demolish the building site and enforcing rehabilitation of said area, would discourage developers to abuse the S24G process. We hope that this situation can be remedied and that stricter controls will be put in place.
Chris Galliers, WESSA	Section 24G of NEMA has long been an issue of contention where there is potential for abuse by proponents. The major challenge that is needed, is where a reasoned and fair process is implemented that will deter developers from a “develop now and seek forgiveness later” attitude, rather than get authorisation through a legal process. At the same time there is merit in having a process that also employs discretionary input. Concerns: 1. Having a fixed limit on the payable fine, needs to be changed. The fine needs to take into account the financial scale of the development. Developers should not see S24G as a process from which they are able to benefit. WESSA has witnessed numerous examples where the fines given for a transgression have been almost welcomed by the proponent. What may have looked like a substantial fine is rendered insignificant once one analyses the scale of the development and the financial benefits accruing in both the short and long-term. The solution is to have realistic fines that are relative to the scale of the entire development and the formula used to get to the fine amount is one of transparency. 2. As S24G applications are often made as a result of not having attempted an EIA. This can be beneficial to the applicant who uses this avenue as a way of avoiding public involvement. There is no I&AP involvement in the S24G process. Public participation may well be able to add value, especially if an external review panel for S24G applications was constituted. In addition, such a review panel could be used as a monitoring committee to make sure that the terms of reference from the final decision has been complied with. 3. A significant failing is that alternatives are never considered in this process. 4. It is also hard to measure the impact of the project if you don’t have the background information, so what scale will be used by the developer in measuring damage?

	So, the following needs to be assessed by the specialist: • The scale and magnitude of the impact? • Whether the transgression was a bona fide mistake? • Was irreparable damage been done to the environment? • What is the loss in terms of ecosystem goods and services? • What is the loss to heritage, sense of place, cultural or pure existence values? • The pre-impacted area must be described • A full evaluation must be done of the site suitability and alternatives had no development occurred. • Develop a public participation and input and social context of the development • Alternatives for existing illegal infrastructure • Environmental impacts of illegal structure needs to be considered • Consider secondary impacts • Detail the impact and potential for rehabilitation. • Provide scenario based alternative courses of action with recommendations. 5. Is there a register of offenders kept by authorities so that if a second application is submitted by the same developer, then it is taken into account? 6. Another concern is that S24G can also be misused by the authorities. It can be a tool that looks to rectify errors that they did not identify in the first place. This means that although there are numerous concerns with regard to S24G, there are many linked issues that need to be addressed (such as having sufficient compliance and monitoring capacity) in order to prevent the need for S24G application submissions. 7. The S24G process involves the appointment by the developer (or perpetrator), of an EAP, to produce a report containing mitigation measures. The issue of independence is raised and thus the need for some level of public participation involvement and independent review panel is needed to add balance to the process. This is definitely a case whereby the competent authority could appoint an independent consultant rather than the developer. 8. In serious cases (a list of criteria that determines what constitutes being serious needs to be established) there should be little room for negotiations and no attempt should be allowed to validate any illegal development or part thereof. The developer should start with rectification and rehabilitation and only then once complete, could the developer apply to start an EIA. What is needed is a process that reflects genuine independence (without fear or favour), accountability, sound agreed methodologies and stiff penalties which includes full rectification/rehabilitation. At the rate at which we are experiencing land transformation, we cannot afford an almost impunitive process.
Prof.Tumai Murombo, University of the Witwatersrand	My 2 cents is that only person who violate the EIA laws without knowledge of the EIA laws should be entitled to S24 G rectification (i.e. Applicants who did not know and could not reasonably have known that the activity concerned required an EIA). Otherwise applicants who knew and should have reasonably known of the legal requirements must simply be penalised through s 28, 24F and be asked to stop and rehabilitate without the option of a rectification procedure. And remember everyone is presumed to know the law! It follows that a person, company or connected other cannot submit this application more than once, as by then they develop the necessary knowledge of the legal requirements for activities they are likely to engage in.
Lea September, consultant at ILISO (and doing Masters in Env Management on this topic)	If S24G is to serve its purpose and make a positive contribution to environmental management and governance, it is absolutely necessary that it be supported by effective enforcement. Otherwise, it is simply handled as a formality/rubber stamping exercise, adds no value, and encourages abuse (both by the public and private sector). Deliberately bypassing a lengthy and costly EIA process can as a result become an attractive option because the possible fine incurred and the risk of prosecution is relatively low, and the likelihood of receiving an environmental authorisation is relatively high. The fine system contains potential for corruption, I am not sure how that can be addressed. The fines applied in terms of S24G are hardly a deterrent for corporate offenders to deliberately bypass the EIA process and accordingly do not prevent repeat offenders. The issue of fines should be envisaged together with that of enforcement to avoid repeat

	offenders. EAPs also have a role to play in informing proponents of the proper process for obtaining environmental authorisation; some EAPs have recommended that proponents commence activities before the EA is issued, resulting in unnecessary S24G applications.
John Wesson, National Association of Conservancies of South Africa	• The process needs to be more transparent especially the determining of the fine on their scale. One or two stakeholder NGO representatives should be party to the allocation of points by a senior official. Looking at the criteria of the scale it is a joke as one will find the person allocating the points has never been on site. • There should be a min of say 10% of the value of the development as the baseline for determining the fine • The six month amnesty period ended in 2005. Anyone breaking the law now should be charged in court and have a criminal record if found guilty by a judge • Open to corrupt practices "easier to plead for forgiveness than follow the law" • Illegal developments in **protected areas** should be equal to poaching in the severity of the punishment • The establishment of No Go areas as proposed to the ministers will remove the " did not know" aspect • Ignorance of the law cannot continue to be used as an excuse and that is what 24G is in effect • The judge should decide on demolition and rehabilitation as part of the sentence