APPENDIX 4: NON-COMPLIANCE PENALTY SYSTEM

1.1 PROCEDURES FOR CORRECTING NON-COMPLIANCE

Both the contractor (during construction phase) and operating company (during operation/rehabilitation phase) shall comply with the environmental specifications and requirements on an ongoing basis and any failure on his part to do so will entitle the Project Manager (PM) to impose a penalty.

In the event of non-compliance the following recommended process shall be followed:

- The PM shall issue a notice of non-compliance to the contractor/operating company, stating the nature and magnitude of the contravention. A copy shall be provided to the ECO.

- The contractor/operating company shall act to correct the non-conformance within 24 hours of receipt of the notice, or within a period that may be specified within the notice.

- The contractor/operating company shall provide the PM with a written statement describing the actions to be taken or already taken to discontinue the non-conformance, the actions taken to mitigate its effects and the expected results of the actions. A copy shall be provided to the ECO.

- In the case of the contractor/operating company failing to remedy the situation within the predetermined time frame, the PM shall impose a monetary penalty based on the conditions of contract.

- In the case of the contractor/operating company being unable to remedy the situation due to permanent environmental damage already incurred, the PM shall impose a monetary penalty based on the conditions of contract.

- In the case of non-compliance giving rise to physical environmental damage or destruction, the PM shall be entitled to undertake or to cause to be undertaken such remedial works as may be required to make good such damage and to recover from the contractor/operating company the full costs incurred in doing so.

- In the event of a dispute, difference of opinion etc., between any parties in regard to or arising out of interpretation of the conditions of the EMP, disagreement regarding the implementation or method of implementation of conditions of the EMP etc., any party shall be entitled to require that the issue be referred to independent specialists for determination.
• The PM shall at all times have the right to stop work and/or certain activities on site in the case of EMP non-compliance or failure to implement remediation measures.

1.2 FINES

The following fines and penalties are in place for transgressions listed below. The fine will be issued after the procedure in 1.1 has been duly followed and only in severe cases and after repeated non-compliance. This applies to the Environmental Management Plan (EMP).

Fines may be issued per incident at the discretion of the ECO. Such fines will be issued in addition to any remedial costs incurred as a result of noncompliance with the EMP. The ECO will inform the contractor/operating company of the contravention and the amount of the fine, and will deduct the amount from monies due under the contract.

Fines for the activities detailed below, will be imposed by the ECO on the operating company/contractor and/or his subcontractors.

Any persons or vehicles constructing/operating within the designated boundaries of a “no-go” area. N$2,000

Any vehicle guilty of reckless driving on and in the vicinity of the site, including excessive speeds. N$1,000

Any vehicle being driven and items of plant or materials being parked or stored outside the demarcated boundaries of the site. N$2,000

Persons repeatedly walking outside the demarcated walking path on the site. N$1,000

Persistent and un-repaired spilling of hazardous materials and materials causing pollution. N$3,000

Persistent littering on site. N$500

Individuals repeatedly not making use of the designated toilet facilities. N$200

Disposal of waste in a manner other than what was agreed upon on site or the prescribed method in the waste management plan section. N$5,000

Deliberate lighting of illegal fires on site (e.g. outside of the designated campsite). N$2,000

For each subsequent similar offence the fine may, at the discretion of the ECO, be doubled in value to a maximum value of N$10,000.
The ECO shall be the judge as to what constitutes a transgression in terms of this document.

1.3 PENALTIES

Where the contractor/operating company inflicts non-repairable damage upon the environment or fails to comply with any of the environmental specifications, he shall be liable to pay a penalty fine over and above any other contractual consequence.

The contractor/operating company is deemed NOT to have complied with this specification if:

- within the boundaries of the site, site extensions and haul/ access roads there is evidence of contravention of the specification;
- environmental damage due to negligence;
- safety of personnel and public being compromised due to negligence;
- the contractor fails to comply with corrective or other instructions issued by the PM within a specific time;
- the contractor fails to respond adequately to complaints from the public; and

Payment of any fines in terms of the contract shall not absolve the offender from being liable from prosecution in terms of any law.

The ECO will compile a report on the non-repairable damage and / or non-compliance with visual and other evidence as well as issuing the penalty to the contractor with the report. A copy must be handed to the RE.

The following penalties are suggested for transgressions:

**Actions leading to erosion:** A penalty equivalent in value to the cost of rehabilitation plus 20%.

**Oil spills:** A penalty equivalent in value to the cost of clean-up operation plus N$1,000.

**Damage to trees:** A penalty to a maximum of N$5,000 shall be paid for each tree removed without prior permission, or a maximum of N$2,000 for damage to any tree, which is to be retained on site.

**Damage to indigenous vegetation:** A penalty equivalent in value to the cost of restoration operation plus N$2,000.
<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
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<tbody>
<tr>
<td>Damage to sensitive environment:</td>
<td>A penalty equivalent in value to the cost of restoration operation plus 20%.</td>
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<tr>
<td>Damage to cultural sites:</td>
<td>A penalty to a maximum of N$100,000 shall be paid for any damage to any cultural historical site.</td>
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<tr>
<td>Damage to natural fauna:</td>
<td>A penalty to a maximum of N$2,000 for damages to any natural occurring animal.</td>
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<tr>
<td>Accident due to safety negligence:</td>
<td>A penalty to a maximum of N$50,000 for injuries to personnel or public.</td>
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