



REFERENCE: 14/3/6/F1/14/0418/19

Mr Heinrich Koen
Success Ventures (Pty) Ltd
P.O. Box 2092
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7630

Cell: 083 450 5250
Email: hkoen@mweb.co.za

Dear Mr Koen

APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) ("NEMA") AGAINST THE ADMINISTRATIVE FINE DECISION ISSUED FOR THE UNLAWFUL CONSTRUCTION OF CHICKEN HOUSES ON PORTION 2 OF FARM NO. 54, VLAMINKE VALEY, VELDDRIF

1. Your appeal lodged against the Administrative Fine decision issued by the Department of Environmental Affairs and Development Planning on 31 May 2019, refer.
2. After considering all relevant facts and supportive documents, I wish to advise that, in terms of section 43(6) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (as amended) ("NEMA"), I have decided to dismiss your appeal and confirm the abovementioned decision of the delegated officer.
3. In terms of section 24G (4) of the NEMA you are hereby informed that for the competent authority to process your application further, an administrative fine of **R250,000** (Two hundred and fifty thousand rand) must be paid.
4. **Payment may be made by cash, cheque or electronic transfer as follows:**

Cash Payment:

The amount may be paid at the cashier's office of the Department of Environmental Affairs and Development Planning, 1st floor Utilitas Building, 1 Dorp Street, Cape Town from Mondays to Fridays between 8h00 and 12h30. The following allocations must be given to the cashier when making the payment:

Reference No: S24G00234
Item: section 24G Administrative fine
Company/ Individual Name:
ID No:

Cheque Payment:

The cheque must be crossed and made payable to the Department and may either be deposited at the cash office under the allocations mentioned above or deposited directly in the bank account. (See bank details below)

Electronic Transfer

An electronic transfer may be made to the following account:

Name of Bank: NEDBANK
Name of Account: Provincial Government of the Western Cape
Department of Environmental Affairs and Development
Planning
Account Type: Current Account
Account Number: 1452 045 003
Branch Name: NEDBANK CORPORATE
Branch Code: 145 209
Reference No.: S24G00234

5. You are hereby requested to forward a copy of the proof of payment (e.g. receipt, deposit slip, electronic transfer confirmation) to the Sub-directorate: Rectification for the attention of Mr Ziyaad Allie (Tel: (021) 483 2991 and Email: Ziyaad.Allie@westerncape.gov.za) and quote the abovementioned reference number to ensure that the case officer can acknowledge the payment of the administrative fine.
6. The administrative fine must be paid within **30 days** from the date of this letter. However, the payment of the administrative fine in instalments may be arranged with the competent authority. If no payment of the administrative fine is received and/or no extended period arrangement of the fine payment is made with the competent authority within the abovementioned timeframe, the competent authority will proceed with the law enforcement action.
7. Please take note that the administrative fine is not an authorisation of the unlawful commencement of the listed activities according to the NEMA. However, your voluntary submission of the section 24G of the NEMA application is acknowledged. Consideration of your application will only commence upon the payment of the administrative fine.
8. **REASONS FOR THE DECISION:**
The following are reasons for dismissing your appeal and confirm the original administrative fine issued by the delegated authority:
 - 8.1 The NEMA principles that apply to the actions of all organs of state that may significantly affect the environment specifically require *inter alia* that:
 - 8.1.1 Environmental management must place people and their needs at the forefront of its concern and serve their physical, psychological, developmental, cultural and social interests equitably;
 - 8.1.2 Development must be socially, environmentally and economically sustainable;
 - 8.1.3 That the disturbance of ecosystems and loss of biological diversity are avoided, or where they cannot be altogether avoided, are minimised and remedied;
 - 8.1.4 That a risk-averse and cautious approach is applied, which considers the limits of current knowledge about the consequences of decisions and actions; and
 - 8.1.5 The social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated,

and decisions must be appropriate in the light of such consideration and assessment.

- 8.2 Vlaminke Valey (Portion 2 of Farm 54) is situated about 2km south-east of Velddrif, on the R399 to Vredenburg, Western Cape. The farm was purchased by the applicant i.e. Success Ventures (Pty) Ltd in 2015. It is zoned Agriculture with a total area of 466 ha. The Berg River runs past the north-east boundary of the farm and the area where the unlawful chicken houses are located is generally flat with no slope and it is located 700m away from the river.
- 8.3 At the time of the land purchase, there were existing chicken houses for commercial egg laying holding a total of 30,500 chickens. The purpose of the purchase was to proceed with chicken farming.
- 8.4 On 29 November 2016, an application was received by the Directorate: Development Management (Region 1) from Success Ventures (Pty) Ltd. This application was submitted to obtain an Environmental Authorisation ("EA") in terms of the 2014 EIA Regulations' listed activities for the expansion of an existing chicken housing facility with four chicken houses of approximately 1,000m² each, to accommodate the addition of a maximum of 160,000 chickens for commercial egg laying on Portion 2 of the Farm No. 54, Vlaminke Valey, Velddrif.
- 8.5 On 11 July 2017, an EA was granted for the expansion of an existing chicken housing facility with four chicken houses of approximately 1,000m² each, to accommodate the addition of a maximum of 160,000 chickens for commercial egg laying on Portion 2 of the Farm No. 54, Vlaminke Valey, Velddrif (Reference No. 16/3/3/1/F1/14/2117/16). As part of the EIA process that culminated in the EA being granted, only one (1) site alternative was assessed as well as the option of not proceeding with the development proposal, i.e., the 'no-go' alternative. This site alternative was subsequently approved in the EA.
- 8.6 On 16 March 2018, the Directorate: Development Management (Region 1) conducted a site inspection to monitor compliance with the conditions of the EA. During the compliance inspection, officials from the Directorate: Development Management (Region 1) observed that construction work relating to the expansion of an existing chicken housing facility by four chicken houses of approximately 1,000m² each on Portion 2 of the Farm No. 54, Vlaminke Valey, Velddrif has been commenced with in an area different from the site described in Sections B and C of the EA.
- 8.7 It is noted, as detailed in the appeal, that:
 - 8.7.1 While the expansion under the EA as indicated above was taking place on this property, one of the applicant's other more established locations, Klipheuwel, had contracted the H5N1 virus and the farm had been forced to cease operational activities. This included culling all their chickens and destroying all eggs, thereby putting the company at a substantial loss.
 - 8.7.2 In response to this, the owners had to make the impromptu decision to instead of constructing the new houses in the position as approved in the EA as mentioned above, move the location of the new high-density facility further away from the existing houses to create a buffer zone between the new buildings and the established medium density facility. The activity was commenced with in September 2017 and was done to limit the spread of H5N1 if it were to be contracted on the farm. At the time of the

commencement of the activities on the site, the applicant understood that an EA had to be obtained prior to the commencement of the activities.

- 8.8 On 7 August 2018, the Directorate: Development Management (Region 1) received an Application for the Amendment of the EA.
- 8.9 On 7 September 2018, the Directorate: Development Management (Region 1) advised the applicant that:
- 8.9.1 During the compliance site inspection possible non-compliances with the EA were observed and the Directorate: Development Management (Region 1) was in the process of referring the matter to the Directorate: Environmental Law Enforcement for further investigation.
 - 8.9.2 The amendment application cannot be considered where non-compliance is suspected.
 - 8.9.3 The Directorate: Environmental Law Enforcement will be conducting official investigations of the suspected non-compliance with the EA and will accordingly contact the holder of the EA.
- 8.10 On 9 October 2018, an Application form was submitted by the applicant i.e. Success Ventures (Pty) Ltd in terms of section 24G of the NEMA to obtain a retrospective EA for the abovementioned unlawful construction of chicken houses on Portion 2 of Farm No. 54, Vlaminke Valey, Veldrif.
- 8.11 On 30 November 2018, the Directorate: Development Management (Region 1) further stated that "*[i]t is only when the issue of the suspected unlawful activities has been finalised by the Environmental Law Enforcement Directorate of this Department, that your proposed additional expansion of the on-site chicken house can be considered.*"
- 8.12 On 31 May 2019, an administrative fine of R 250,000 (Two hundred and fifty thousand rand) was issued to the applicant as required in terms of section 24G(4) of the NEMA.
- 8.13 The competent authority was correct in imposing an administrative fine as section 24G(4) of the NEMA requires an applicant that has commenced with an activity without an authorisation to, in the rectification process of the unlawful activity, pay an administrative fine which may not exceed R5 million rand. Section 24G(4) of the NEMA does not make provision for exemption from the payment of the administrative fine.
- 8.14 Sub-sections 44 (1) (aC) and (1B) of the *National Environment Laws Second Amendment Act, 2013 (Act No. 13 of 2013)* ("NELSAA") came into effect on 18 December 2013. Section 44 (1) (aC) of the NELSAA stated that "*The Minister may make regulations relating to the procedure and criteria to be followed in the determination of an administrative fine in terms of section 24G*".
- 8.15 The Regulations relating to the procedure to be followed and criteria to be considered when determining an appropriate fine in terms of section 24G ("Fine Regulations") were promulgated on 20 July 2017 in terms of section 44(1)(aC) and (b) of the NEMA. Regulation 4(1) of the Fine Regulations states the following: "*The fine committee, when determining the proposed quantum of the fine, as well as the competent authority when determining the fine in terms of section 24G(4), must take the following considerations 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-
 - i. the socio-economic impact;
 - 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 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 Management Waste Act;
 - ii. whether or not the applicant has previously been convicted in respect of a contravention b 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.
- (f) whether the applicant is a firm or a natural person; and
- (g) any other representations made by the applicant in terms of Annexure A Section C in respect of the quantum of the fine."

8.16 As such, the following information inter alia which was submitted in terms of section 24G of the NEMA was considered:

- 8.16.1 The EIA Report, as compiled by an independent environmental assessment practitioner in terms of section 24G of the NEMA found the following:
 - 8.16.1.1 The site is classified as Saldanha Flats Strandveld. However, the site has previously been transformed by being used for agricultural purposes and as a grazing area. CapeNature also confirmed that the site was previously cultivated and no natural vegetation was remaining on the site prior to the commencement of the activities.
 - 8.16.1.2 A portion of 6.8% of the unemployed total of 25 493 people that are economically active (employed or unemployed looking for work) is looking for work. The development of the chicken houses created some employment during the construction and operational phases.
 - 8.16.1.3 The preferred alternative involves the construction of the chicken houses at its current location. This is an alternative to the original plan. It is further away from the other chicken houses to create a barrier in the case of a bird flu outbreak and is also located on less sensitive land than the original layout.
 - 8.16.1.4 Alternative 2 involves the expansion of the original chicken houses. This alternative was not considered preferred due to the large scale H5N1 (bird flu) outbreak that occurred right when the construction activities started. This alternative was deemed a

contamination risk due to its proximity to the original medium density chicken houses. This had the potential to encourage great financial loss to the applicant in the future if bird flu were to ever breakout on the farm. The site was also not considered preferable as it situated within a Critical Biodiversity Area ("CBA"). As such, the alternative was discarded.

- 8.16.1.5 The no-go alternative entails the demolition of the chicken houses and rehabilitating the site. This alternative has been considered but is not a viable option as the applicant will not gain financial benefits, achieve greater food security and create employment for the unemployed.
 - 8.16.1.6 The generation of dust and noise may negatively impact surrounding residents.
 - 8.16.1.7 The construction of four chicken houses will increase the demand for water and electricity.
 - 8.16.1.8 The need for eggs has increased in the region as the state of the economy is declining, resulting in the current need for nutritious affordable food production in the Western Cape region.
 - 8.16.1.9 The newly constructed buildings will have a visual impact and will be visible from the opposite side of the estuary and the road.
- 8.16.2 The following factors that are required to be considered by the Fine Regulations when determining an appropriate fine in terms of section 24G of the NEMA:

Socio-economic impact

The EAP stated that:

- 8.16.2.1 *"The activity is not giving, has not given and will not give rise to any negative socio-economic impacts".*
- 8.16.2.2 The activities on the site are four high density chicken houses. The houses are part of the agricultural activities on the site and will result in positive socio-economic impacts through job creation and contributing to local and regional food security.

Biodiversity impact

- 8.16.2.3 *"The activity is giving, has given and will give rise to localised biodiversity impacts."*
- 8.16.2.4 The development of the chicken houses resulted in the clearing of vegetation (albeit significantly degraded vegetation). The area was previously used for grazing and agricultural uses. However, the site does not border a terrestrial ecological support area which could have resulted in some loss of such vegetation. The current expansion activities are not located on a sensitive area.

Sense of place Impact and/or Heritage Impact

- 8.16.2.5 *"The activity is in keeping with the surrounding environment and/or does not negatively impact on the affected area's sense of place and/or heritage."*
- 8.16.2.6 The activity currently on the site is in keeping with the surrounding environment as it is located on agricultural land.

Pollution Impact

- 8.16.2.7 "The activity is not giving, has not given and will not give rise to any pollution."
- 8.16.2.8 The chicken houses have not resulted in the pollution of the environment.

Compliance history and knowledge of the applicant

- 8.16.2.9 No administrative action has been undertaken against the applicant in terms of the NEMA and Specific Environmental Management Acts ("SEMA").

Previous convictions in terms of the NEMA and SEMA

- 8.16.2.10 The applicant confirmed that he has not been convicted in terms of the NEMA and SEMA.

Applicant's legal persona

- 8.16.2.11 The applicant is a firm.

Relevant information that the applicant would like to be considered

- 8.16.2.12 At the time of construction, a large scale H5N1 (bird flu) breakout suddenly occurred in the Western Cape. The site that was approved in the EA was deemed a contamination risk due to its proximity to the original medium density chicken houses. This had the potential to encourage great financial loss to the applicant in the future if bird flu were to ever break out on the farm. As such, the chicken houses were constructed away from the established medium density houses to create a buffer zone in the case of a bird flu breakout.
- 8.16.2.13 The previous site that was approved in the EA was more sensitive and fell onto a CBA. The site on which the houses were built was previously used for grazing. Therefore, the location factor of the chicken houses was considered. The proposed development is located on agricultural land and the chicken houses' purpose will be to provide financial security for the company, as their other farm had a bird flu outbreak.

Explanation why the applicant did not obtain an EA

- 8.16.2.14 The applicant took the initiative to choose a site which would not be as sensitive as the previously chosen site. The previous site was also more sensitive and fell onto a CBA. In contrast, the site on which the houses were built was previously used for grazing thereby taking the location factor of the chicken houses into account.

- 8.16.3 The Environmental Management Programme consists of, inter alia, measures to mitigate the significant impacts of the activity, including the biosecurity risks associated with chicken houses.

- 8.17 The *Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)* recognises the inter-relationship between the environment and development. It envisages that environmental considerations will be balanced with socio-economic considerations through the ideal of sustainable development. This is apparent from section 24(d)(iii) of the NEMA which provides that the environment will be protected

by securing "ecologically sustainable development and use of natural resources while promoting justifiable economic and social development".

8.18 I concur that:

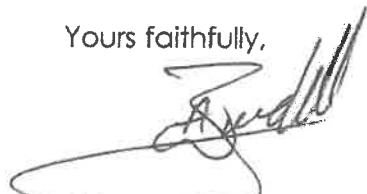
- 8.18.1 "The activity is not giving, has not given and will not give rise to any negative socio-economic impacts".
- 8.18.2 The distance between poultry farms, from a biological risk management perspective, is primarily determined by how far pathogens can spread through the air.
- 8.18.3 The Nooitgedacht chicken farm is located much further away from the section 24G application area to ensure an adequate distance from the nearest chicken houses other than those that were pre-existing on the site.
- 8.18.4 The area where the section 24G is undertaken has less negative impact than the original authorised area as was stated in the final Assessment Report.
- 8.18.5 The expanded operation positively contributes to the local and regional economy because of the increased sourcing of feed, 8 additional job opportunities, providing a nutrient resource to farmers and delivery of eggs to large retail. Other companies and individuals also benefit, both directly and indirectly, through the purchasing of materials or the selling of the product.
- 8.18.6 There were circumstances under which the development had to take place. It was due to the outbreak of the chicken virus.
- 8.18.7 The property already operates a lawful chicken facility and has authorisation for an expansion.
- 8.18.8 The original authorised site was ready for development when the H5N1 epidemic occurred and the applicant could not risk building the new chicken houses right next to the existing ones.
- 8.18.9 I also concur with the Department's responding statement that:
 - 8.18.9.1 The appellant was issued with an approved EA on 11 July 2017 for the "proposed expansion of an existing chicken housing facility with four chicken houses of approximately 1,000 m² each, to accommodate the addition of maximum of 160,000 chicken for commercial egg laying on Portion 2 of the Farm No. 54, Vlaminke Valey, Velldrif". Taking cognisance of this, it is apparent that the appellant was fully aware of the legislative requirement to obtain an EA for the construction of chicken houses. The construction of the chicken houses at the current location was undertaken prior to obtaining the requisite EA.
 - 8.18.9.2 Taking into consideration the administrative fine calculator endorsed by the competent authority for the determination of administrative fines in terms of section 24G of the NEMA, the appellant was afforded the lowest administrative fine (R250,000 instead of R500,000 as appended to the administrative fine decision dated 31 May 2019) as deemed reasonable for the application and taking into consideration their circumstances, as put forward in their representations.

8.19 Considering the above, an administrative fine of R250,000 (Two hundred and fifty thousand rand) must be paid in terms of section 24G(4) of the NEMA.

The National Environmental Management Principles (set out in section 2 of the NEMA) which apply to the actions of all organs of state, serve as guidelines by reference to which any

organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment. In terms of the NEMA Principles, the effects of decisions on all aspects of the environment are to be considered. As such, the consideration, assessment and evaluation of the social, economic and ecological impacts of activities (disadvantages and benefits) must be undertaken, and decisions are to be appropriate in the light of such consideration and assessment.

Yours faithfully,



ANTON BREDELE

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

DATE: 27/8/2019

Copied to:

(1) Mr Pieter Badenhorst/ Ms Therina Oberholzer (Pieter Badenhorst Professional Services)

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(2) Mrs Zaidah Toefy (Sub-directorate: Rectification)

Email: Zaidah.Toefy@westerncape.gov.za

(3) Ms Siposake Msila (Sub-directorate: Financial Accounting)

Email: Siposake.Msila@westerncape.gov.za



REFERENCE: 14/3/6/F1/14/0418/19

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Dear Adv. Maré

APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) ("NEMA") AGAINST THE ADMINISTRATIVE FINE DECISION ISSUED FOR THE UNLAWFUL CONSTRUCTION OF CHICKEN HOUSES ON PORTION 2 OF FARM NO. 54, VLAMINKE VALEY, VELDDRIF

Your responding statement lodged with regards to the appeal lodged against the section 24G Administrative Fine decision issued on 31 May 2019, refers.

Please find attached the Appeal decision regarding this matter as issued to Success Ventures (Pty) Ltd, i.e. the applicant in terms of section 24G of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA").

Your interest in the future of our environment is greatly appreciated.

Yours faithfully

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

DATE:

27/9/2019

Copied to:
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