



EA APPEAL REFERENCE: 14/3/1/B1/14/0451/20
WML APPEAL REFERENCE: 14/3/2/B1/14/0452/20

Mr David Houghton
South African Farm Assured Meat Group cc
P.O. Box 895
ROBERTSON
6705

Tel.: 023 626 6320
Fax.: 023 626 6040
E-mail: david@robab.co.za

Dear Mr Houghton

APPEALS LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE WASTE MANAGEMENT LICENSE AND ENVIRONMENTAL AUTHORISATION ISSUED FOR A COMPOSTING FACILITY AND FEEDLOT ON PORTION 6 OF THE FARM MIDDELBURG 10, ROBERTSON

1. The Appeals lodged in terms of section 43(2) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") against the Waste Management License ("WML") and the Environmental Authorisation ("EA") issued for a composting facility and feedlot on Portion 6 of the Farm Middelburg 10, Robertson, refer.
2. **EMPOWERING PROVISIONS:**
 - 2.1. In terms of regulation 10(2) of the National Appeals Regulations (Government Notice No. R. 993 of 8 December 2014):
"An appeal lodged after the commencement of the Environmental Impact Assessment Regulations, 2014 must be submitted, processed and considered in terms of these Regulations."
 - 2.2. In terms of section 43(6) of the NEMA:
"The Minister or an MEC may, after considering such an appeal, confirm, set aside or vary the decision, provision, condition or directive or make any other appropriate decision, including a decision that the prescribed fee paid by the appellant, or any part thereof, be refunded."
3. After a careful consideration of all the Appeals, all information presented by the Directorate: Waste Management (WML); and the Directorate: Development Management Region 1 (EA), I have decided to dismiss the Appeals and confirm the WML and the EA in terms of section 43(6) of the NEMA.

4. **AMENDMENTS TO THE WASTE MANAGEMENT LICENCE**

- 4.1. The abovementioned WML must be complied with and the following amendments must be implemented:

"SECTION C: LICENCE CONDITIONS

1. LOCATION

- 1.3 The footprint of the Facility must be according to co-ordinates indicated on the Waste Management Licence Application Form, dated 26 January 2018, and Waste Management Licence Application Additional Information Annexure, dated 10 January 2018, submitted by the Licence Holder, which are as follows:

Corner Number	Latitude (S)	Longitude (E)
1	33° 43' 50.41"	19° 44' 41.61"
2	33° 43' 52.27"	19° 44' 43.84"
3	33° 43' 55.42"	19° 44' 35.52"
4	33° 43' 57.01"	19° 44' 37.27"

18 COMMENCEMENT

This activity must commence within a 5 (five) year period from the date of this appeal Waste Management Licence. If commencement of the activity does not occur within that period, the validity of this Licence lapses and a new application for Licence must be made in order for the activity to be undertaken.

19 GENERAL

19.4 *This Licence is valid for 10 years from the date of this Appeal decision or any period earlier as required by the Director. The Licence can be amended or withdrawn or the validity thereof extended."*

- 4.2. The following additional Licence Condition must be implemented and complied with:

Condition 20:

"The holder of the Appeal Waste Management License must in writing, within 14 (fourteen) days of the date of the appeal decision notify all registered interested and affected parties ("I&AP's")–

20.1 The outcome of the appeal;

20.2 The reasons for the appeal decision; and

20.3 The date of the decision."

- 4.3. SECTION D: APPEAL OF LICENCE" is excluded from the Waste Management Licence.

5. **AMENDMENTS TO THE ENVIRONMENTAL AUTHORISATION**

- 5.1. Condition E8 and Section G of the abovementioned EA are excluded from this authorisation.

- 5.2. The abovementioned EA must be complied with and the following amendments must be implemented:

"Section E: Conditions of Authorisation

Condition E2:

The holder must commence with the listed activities on the site within a period of **five (5) years** from the date of this Appeal Environmental Authorisation.

Condition E7:

The holder of the Appeal Environmental Authorisation must in writing, within 14 (fourteen) days of the date of the appeal decision notify all registered interested and affected parties ("I&AP's") about–

7.1 The outcome of the appeal;

7.2 The reasons for the appeal decision; and

7.3 The date of the decision."

6. REASONS FOR THIS APPEAL DECISION:

6.1. The reasons outlined in the original EA and WML are applicable to the Appeal Decision and the following are additional reasons in response to the Appeals:

6.1.1. Background to the applications for the WML and EA

The Rejection of the WML Application dated 16 August 2018 relates to the Application for a WML for who the Delegated Competent Authority is the Director: Waste Management and not the Director: Development Management (Region 1) as cited by the Appellant.

SAFAM appealed the Rejection of the Application for a WML. The Appeal decision was issued on 13 June 2019.

SAFAM and three other parties took the Appeal Decision dated 13 June 2019 on review in the High Court of South Africa (Western Cape Division), Case No. 14084/19 and the Court Order dated 18 October 2019 was issued. The court ordered as follows:

- "1. The decision taken by the First Respondent ("the Minister") on 13 June 2019 in respect of the appeal lodged by the Applicants in terms of section 43(6) of the National Environmental Management Act, 107 of 1998 ("NEMA") against the decision referred to in paragraph 2 below is reviewed and set aside.*
- 2. The decision taken by the Director: Waste Management on 16 August 2018 to reject the First Applicant's application for a waste management licence ("the Waste Management Licence Application") in terms of section 49(1)(c) of the NEM:WA is reviewed, set aside and remitted to the Director: Waste Management in terms of section 8(1)(c)(i) of the Promotion of Administrative Justice Act, Act 3 of 2000, for a determination of the Waste Management Licence Application, with the following directions: -*
 - 2.1 the Applicants shall within 5 days of the date of the court order submit such further information as required by the Department pursuant to the WML Application in respect of the land developed for purposes of the composting facility in order to ascertain whether such land is bigger than 1 hectare for purposes of Activity 28 of Listing Notice 1;*
 - 2.2 the remainder of the information submitted as part of the WML Application shall suffice and does not need to be resubmitted.*
- 3. It is recorded that, pursuant to the settlement of this application, the Minister has, in terms of section 47C of NEMA, condoned the First Applicant's failure to submit the final Basic Assessment Report for purposes of the First Applicant's application for environmental authorization in terms of the 2014 EIA Regulations for activities 4,*

- 8 and 28 as contained in Listing Notice 1: 2014 ("the NEMA Application"), within the time periods required by regulation 19(1) of the 2014 EIA Regulations.
4. The First Applicant shall submit the final NEMA Basic Assessment Report, and the information referred to in paragraph 2.1 above, to the Department within 5 days of the date of the court order.
 5. Provided that the First Applicant complies with the time periods in paragraphs 2.1 and 4 above, the decisions in respect of the Waste Management Licence Application and the NEMA Application shall be made by no later than 29 November 2019."

The Applications for the WML and EA related to the same development and in terms of the Court Order, the decisions for both had to be made by 29 November 2019. It must be noted that the information that informed the EA and WML was subject to a Public Participation Process that complied with the EIA Regulations, 2014. No new information was generated or submitted by the applicant to the Delegated Competent Authorities, i.e. Directorate: Development Management (Region 1) for the EA and the Directorate: Waste Management for the WML.

Accordingly, I conclude that the adjudication of the information on which the EA and WML were based on, served in the public domain.

6.1.2. Lapsing of Application

The timelines for the EIA application are as follows:

- The EIA application was submitted on 26 January 2018 to the Directorate: Development Management (Region 1).
- The Draft BAR was submitted on 14 March 2018 to the Directorate: Development Management (Region 1).
- The Directorate: Development Management (Region 1) requested clarity on 16 April 2018 regarding the development size of the facility to ascertain whether Listed Activity 28 was triggered.
- The EAP submitted, on 25 April 2018, a response to the Directorate: Development Management's (Region 1) letter dated 16 April 2018.
- The Directorate: Development Management (Region 1) responded to the EAP's submission dated 25 April 2018, on 26 April 2018.
- On 23 May 2018, the Directorate: Development Management (Region 1) informed the Applicant that, in terms of Regulation 45 of the EIA Regulations, 2014 (as amended), the Application has lapsed due to the fact that the Final BAR was not submitted within the stipulated timeframes of the EIA Regulations 2014.

Numerous interactions between the Directorate: Development Management (Region 1) and the EAP took place between the submission date of the Application form on 26 January 2018 and the Directorate: Development Management (Region 1)'s letter dated 23 May 2018. Furthermore, the Court Order recorded that the Minister to condone the late submission of the Final BAR to the Directorate: Development Management (Region 1).

I conclude that the failure by the EAP and the Applicant to not submit the Final BAR, within 90 days from 26 January 2018, to the Directorate: Development Management (Region 1) was not as a result of no action or progress on the EIA Application but due to the issue that the current composting facility's footprint was deemed to exceed the threshold of 1 ha.

6.1.3. Unlawful commencement of listed activities

I condoned the late submission of the Final BAR to the Directorate: Development Management (Region 1), which was received on 25 October 2019. The submission of the Final BAR adhered to the timeframes stipulated by the Court Order, i.e. within 5 days from the Court Order date of 18 October 2019.

Numerous interactions between the Directorate: Development Management (Region 1) and the EAP took place between the submission date of the Application form on 26 January 2018 and the Directorate: Development Management (Region 1)'s letter dated 23 May 2018 due to the fact that the Directorate: Development Management (Region 1) deemed that the NEMA EIA Regulations, 2014 Listing Notice 1, Activity Number 28, as contained in GN No. R. 983 of 4 December 2014, was commenced with without the requisite EA, and states as follow:

"Residential, mixed, retail, commercial, industrial or institutional developments where such land was used for agriculture, game farming, equestrian purposes or afforestation on or after 01 April 1998 and where such development:

(i) will occur inside an urban area, where the total land to be developed is bigger than 5 hectares; or

(ii) will occur outside an urban area, where the total land to be developed is bigger than 1 hectare;

excluding where such land has already been developed for residential, mixed, retail, commercial, industrial or institutional purposes".

In terms of the Court Order the area in question was surveyed and it was confirmed that the area disturbed by the current composting facility is less than 1 ha. The area surveyed included the composting area, the run-off collection dam, as well as storage areas. Thus, the threshold of 1 ha was not exceeded for the current composting facility, and Listed Activity 28 was not triggered and the requirement to follow the Rectification, i.e. Section 24G process, was no longer necessary.

The decision to reject the WML Application on 16 August 2018 was based on the understanding that some EIA listed activities were unlawfully commenced with, was reviewed, set aside and remitted back to Directorate: Waste Management for a decision as per the Court Order.

Please note, that no additional Final BAR was submitted to the Directorate: Waste Management. The only additional information the Directorate: Waste Management received was confirmation from the Applicant that the activities at the current composting facility did not unlawfully trigger a listed activity in terms of the NEMA.

The Appeal issue related to the zoning to allow for the operation of a composting facility to fall within the ambit of the Langeberg Municipality and the nuisance issues associated with the facility are administered by the Cape Winelands District Municipality.

I am satisfied that no listed activities were commenced with without the requisite authorisations.

6.1.4. Persistent failure to have regard to the rights of Interested and Affected Parties ("I&AP's")

As mentioned above all the allegations related to the footprint size of the current composting facility were investigated and it was confirmed that the composting facility is under the 1 ha threshold and had thus not unlawfully commenced with any EIA Listed Activities and Waste Management Activities.

The WML and EIA Applications, submitted on 26 January 2018, complied with NEMA and the relevant Waste Management and EIA Regulations pertaining to public participation.

As per the Court Order, the Applicant submitted the outcome, of the survey of the current composting facility, to the Delegated Competent Authorities, Waste Management and EIA, where it was confirmed that the area disturbed by the activities of the current composting facility measures 8433m² in extent, which is less than 1 ha. T

The Final BAR submitted on 25 October 2019, in terms of the EIA application was materially the same as the Draft BAR that was submitted on 14 March 2018.

The Directorate: Waste Management did not receive a second Final BAR. The information contained in the Final BAR submitted on 30 April 2018 was sufficient for the Directorate: Waste Management to decide on the WML Application.

It is not mandatory in terms of the EIA or Waste Management Regulations that the Final BAR, if it is the same as the Draft BAR, must be made available to I&AP's prior to submission for a decision.

I conclude that the information served before the Delegated Competent Authorities in terms of the WML and EIA Applications was not new information but information required for confirmation in terms of the footprint size of the current composting facility, and that the public participation process undertaken in each process complied with the NEMA and EIA Regulations and the *Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)*. The Appeal Administrator is also satisfied that none of the rights of the I&AP's, i.e. to make representations on the Final BAR, were limited as there was no second Final BAR.

6.1.5. SAFAM's inability to manage the environmental impacts of its activities

The current composting facility has been visited on numerous occasions by officials from the Department, both prearranged and unannounced during the course of the WML and EIA application processes. On no occasion has any official indicated that the facility is poorly managed.

In addition, the Environmental Health Practitioner from the Cape Winelands District Municipality, after he had visited the current composting facility, reported that he was satisfied with management of the facility and there were no flies nor offensive odours emanating from it.

It should also be noted that composting is a common practice associated with agricultural practices and prevents organic waste from going to landfill. It is a means

of beneficiating and treating a waste stream that could otherwise have detrimental impacts on the environment.

The Environmental Management Programme ("EMP") submitted as part of the Draft and Final BAR includes measures to manage the proposed composting facility and has been included as a condition in the WML and EA, respectively to further mitigate the impacts. Non-compliance with the conditions of the EA and WML will result in the matter being referred to the Directorate: Environmental Law Enforcement to enforce compliance with the conditions of the WML and EA.

I am satisfied that the current composting facility is sufficiently managing any potential nuisance emanating from the site and that the proposed composting facility as authorised by the WML and EA will also be sufficiently managed as long as it complies with the WML and EA.

6.1.6. Failure to conduct an adequate impact assessment / Failure by the Delegated Competent Authority to independently apply its mind

The decision-making process commences when an application, in terms of the EIA Regulations and/or NEM:WA is submitted to the Delegated Competent Authorities' for a response to the application form ; the comment on the draft reports; acceptance of the final reports and culminates in the issuance of the EA and or WML.

Following the Court Order, no new or additional information was submitted to the Delegated Competent Authorities, i.e. the Directorate: Waste Management and the Directorate: Development Management (Region 1), but merely information that confirmed that the composting facility did not engage in the unlawful commencement of any listed activities.

The Final BAR that was submitted 25 October 2019 to the Directorate: Development Management (Region 1), was materially the same as the Draft BAR that was submitted on 14 March 2018.

The Directorate: Waste Management did not receive a second Final BAR. The information contained in the Final BAR submitted on 30 April 2018 was sufficient for the Directorate: Waste Management to decide on the application.

It is not mandatory in terms of the EIA or Waste Management Regulations that the Final BAR, if it is the same as the Draft BAR, be made available to &AP's prior to submission for a decision. As noted previously, the Applicant had 5 days in which to submit the Final BAR to the Directorate: Development Management (Region 1) for the EA, as recorded in the Court Order.

The evaluation of potential specialist input for the composting facility concluded that:

- Biodiversity - CapeNature provided comment on the Applications and did not indicate the need for a biodiversity study. Furthermore, the area has been used for agricultural activities for more than 10 years and was thus already/previously transformed, thus not virgin soil.
- Health Impact Study - No health impact study was required by the Delegated Competent Authorities (Waste Management and EIA) as predominantly non-infectious material will be composted at the Facility. Furthermore, the study would be a desktop study that would not take into consideration the effectiveness of the

composting facility through their composting process to mitigate odours and other nuisances.

- Traffic Impact Study - No traffic impact study was required as the area is in a rural area. The composting facility, operating at the authorised capacity, is anticipated to generate two to three trips on a daily basis.
- Air quality — Inputs were received from the Department's Sub-directorate: Air Quality Management as well as the Cape Winelands District Municipality. Neither indicated the need for an air quality impact assessment.
- Socio-economic — The representations made by the Applicant were deemed sufficient, and no socio-economic impact was required.
- Storm water management study - A storm water management plan was submitted as part of the Final BAR.
- Specialist water study - The Breede Gouritz Catchment Management Agency ("BGCMA") were approached and their comments were incorporated in the BAR. Furthermore, a Freshwater Ecological Impact Assessment and the Risk Assessment Matrix were included in the Final BAR.

The suite of information that the EA and WML were based on comprised of existing information that has been part of the EIA and WML applications since 2018. Thus, sufficient information served before the Delegated Competent Authorities, i.e. the Directorate: Waste Management and the Directorate: Development Management (Region 1).

I conclude that no new information served before the Delegated Competent Authorities in terms of the WML and EIA Applications, the public participation process undertaken complied with the NEMA and EIA Regulations and that none of the rights of the I&APs, i.e. to make representations on the BAR, was limited as there was no second Final BAR.

6.1.7. The approval of the application was unlawful as the Competent Authority can only consider an application made under Section 24G of NEMA

In terms of the Court Order, the area in question was surveyed and it was confirmed that the area disturbed by the composting activities were less than 1 ha. Thus, Listed Activity 28 of the EIA Regulations, 2014 was not commenced with without a requisite EA and the requirement to follow the NEMA Rectification (Section 24G) process was no longer necessary.

I am satisfied that no listed activities were commenced with without a WML and or an EA.

6.1.8. The Competent Authority failed to take into account the unauthorised continuation by the Applicant of Listed Activity 8 of Listing Notice 1 of the EIA Regulations, 2014

Zoning is a technique of land-use management used by municipalities. Thus, the zoning of the Farm Middelburg falls within the ambit of the Langeberg Municipality and is beyond the scope of NEMA and EIA Regulations, 2014.

Listed Activity 8, in Listing Notice 1 of the EIA Regulations, 2014 states –
"The development and related operation of hatcheries or agri-industrial facilities outside industrial complexes where the development footprint covers an area of 2 000 square metres or more."

The Final BAR only refers to a feedlot (Listed Activity 4 in Listing Notice 1 of the EIA Regulations, 2014); dams, access roads, the composting facility and associated infrastructure (Listed Activity 28 in Listing Notice 1 of the EIA Regulations, 2014).

Furthermore, composting does not fall within the ambit of beneficiation and thus Listed Activity 8 in Listing Notice 1 of the EIA Regulations, 2014 was not deemed to be applicable.

The current composting facility was surveyed, and it was confirmed that the footprint of the current composting area disturbed by the activities was less than 1 ha. Thus, Listed Activity 28 was found to not have been commenced with and the requirement to follow the NEMA Rectification (Section 24G) process was no longer appropriate.

I conclude that the establishment of the composting facility does not trigger Listed Activity 8 of the EIA Regulations, 2014, thus it was not included in the Application Form, the BAR or included in the EA.

6.1.9. The administrative action is procedurally unfair as a material procedure prescribed by the EIA Regulations was not complied with

The Final BAR submitted in terms of the EIA Application on 25 October 2019 was materially the same as the Draft BAR that was submitted to the Directorate: Development Management (Region 1) on 14 March 2018. As recorded in the Court Order, the Final BAR had to be submitted to the Directorate: Development Management (Region 1) with 5 days from the date of the Court Order, i.e. 18 October 2019. It must be noted that the information that informed the EA and WML was subject to a Public Participation Process that complied with NEMA and the EIA Regulations, 2014.

Furthermore, as recorded in the Court Order, the site was surveyed, and it was confirmed that the area disturbed by the current composting activities on site amounts to less than 1 ha. Thus, the Listed Activity 28 was found to not have been commenced with without a requisite EA and the requirement to follow the NEMA Rectification (Section 24G) process was no longer necessary.

I conclude that no new information served before the Delegated Competent Authorities in terms of the Waste and EIA applications and the public participation process undertaken complied with the EIA.

6.1.10. Notification of the Decisions

Regulation 3 of the EIA Regulations, 2014 (GN R. No. R. 983 of 4 December 2014), states –

- “(2) For any action contemplated in terms of these Regulations for which a timeframe is prescribed, the period of 15 December to 5 January must be excluded in the reckoning of days.*
- (3) Unless justified by exceptional circumstances, as agreed to by the competent authority, the proponent and applicant must refrain from conducting any public participation process during the period of 15 December to 5 January.”*

The period between 15 December to 5 January of a given calendar year is automatically excluded from the timeframes. The calculation of the applicable deadlines was calculated from 2 December 2019, when I&AP's were notified of the

EA and WML until 15 December 2019 and recommenced on 6 January 2020. The deadline to submit an Appeal was calculated to be 13 January 2020.

Any aggrieved party could also apply in terms of Section 47C of NEMA, requesting the Minister to extend the period to submit an Appeal or condone the late filing of an Appeal. It is noted that no such requests were received.

I am satisfied that no right to submit an Appeal was limited by the issuance of the EA and WML on 29 November 2019.

6.1.11. The decision to approve the EA was materially influenced by an error of law wherein the Competent Authority failed to correctly consider the requirements relating to commencement of a listed activity

The Court Order required that the Applicant provide information to ascertain whether the footprint of the current composting facility is bigger than 1 ha. The area in question was surveyed and it was confirmed that the area disturbed by the activities measures 8433 m². Thus, the threshold of 1 ha was not exceeded, and Listed Activity 28 was not triggered and the requirement to follow the NEMA Rectification (Section 24G) process was no longer necessary.

I am satisfied that no listed activities were commenced with without the requisite authorisations.

6.1.12. The decision to approve the WML was materially influenced by an error of law wherein the Delegated Competent Authority failed to correctly consider the requirements relating to commencement of a waste management listed activity / The approval of the waste application was unlawful as the Competent Authority may only process an application to approve unlawfully commenced activities by way of a Section 24G of NEMA process.

The application for a WML was submitted on 26 January 2018 and the Final BAR was submitted on 30 April 2018.

The decision to reject the WML application was based on the interpretation that Listed Activity 28 was deemed to have been commenced without an EA, was reviewed and set aside. Furthermore, the area covered by the current composting facility was surveyed and it confirmed that the footprint of the current composting facility is less than 1 ha. Thus, the Listed Activity 28 was found not to have been triggered and the requirement to follow the NEMA Rectification (Section 24G), process was no longer necessary.

Furthermore, the Court Order recorded that "*The Applicants undertake not to treat in excess of ten tons of general waste per day calculated on a monthly average on Portion 6 of Farm Middelburg 10, Robertson ("the Farm") and that the total area within which the composting activities take place on the Farm shall not exceed 1 hectare.*" Insofar as the thresholds recorded in the Court Order, the current composted facility is deemed not have commenced with any Waste Management Activities or EIA Listed Activities.

The current composting facility is below the threshold of 10 tons and 1 ha respectively.

The approval of a proposed composting facility that exceeds the threshold stated in Category A Waste Management Activity 3(6), i.e. 10 tons is what the Applicant applied and was granted a WML for. The Waste Management Activity 3(6) does not relate to the area occupied by the composting facility, but rather the amount of waste that the facility processes. It is important to note that as soon as waste is composted, it ceases to be waste. Therefore, the finished compost does not fit into the definition of waste as defined in the NEM:WA.

The windrows that fall outside the approved footprint will be consolidated and moved to within the footprint of the proposed composting facility, as indicated by the coordinates in the WML. Although some of the composting rows were beyond the boundaries, this does not trigger a listed activity in terms of the NEM:WA.

The Department (Directorate: Waste Management and Directorate: Development Management (Region 1)) performed a site visit on 11 November 2019 to verify the measurements and footprint size of the current composting facility as indicated in the Sketch Plan, i.e. 8433 m². The activities observed at the current composting facility by the Departmental officials were in line with the information provided in the Sketch Plan.

The inclusion of a registered engineer for the establishment of the proposed composting facility, i.e. a composting facility that has the capacity to treat more than 10 tons of general waste, is to ensure the plans that are submitted, and the construction of the larger composting facility itself, meet the requirements as set out by the Engineering Council of South Africa.

I am satisfied that no listed activities have been commenced with without the requisite authorisations and the NEMA Rectification (Section 24G) process is not required.

6.1.13. The Final BAR for the WML

The Draft BAR was made available to the I&AP's and the public between 14 March 2018 and 16 April 2018, and the Final BAR was submitted 30 April 2018 to the Directorate: Waste Management.

The Draft and Final BARs were materially the same, thus all I&AP's and specifically the Langeberg Municipality were notified of the Draft and Final BARs and all its contents. Thus, all I&AP's had sight of all the information that served before the Delegated Competent Authorities for the WML and EA.

Furthermore, the Langeberg Municipality is the Competent Authority for all land use management applications in the area and adjudicated on the rezoning application for the composting facility.

Section B of the WML provides a description of the development and the list of Waste Management Activities that are authorised. Annexure 1 of the WML contains the reasons for the decision and includes a discussion of the Alternatives (Property and location; activity; design/layout; technology; operation activities and the no-go), environment and the public participation process.

I am satisfied that the Draft and Final BARs were materially the same, it served in the public domain before it was submitted to the Delegated Competent Authorities for

a WML and EA. In addition, the WML adequately describes the development, the list of authorised Waste Management Activities and provides sufficient reasons for the decision.

6.1.14. The Site/Footprint

The Site Layout Plan for the proposed composting facility was included in the Draft and Final BARs for the WML and can be found as Appendix A of the Draft and Final BARs.

The proposed composting facility will comprise of areas for the composting rows and 1 associate infrastructure, such as the collection dams and storage areas.

It is noted that the coordinates stated in the WML are incorrect.

I conclude that the WML clearly indicate the area for the composting rows and associated infrastructure and that the error with the coordinates be rectified in the Appeal Decision.

6.1.15. Treatment of Waste

The WML includes Waste Management Activity 3(6) in Category A of the NEM:WA, which relates to the mass of general waste to be treated, and not an area to be used for this purpose, i.e. *"The treatment of general waste using any form of treatment at a facility that has the capacity to process in excess 10 tons but less than 100 tons"*.

The thresholds related to the footprint of the proposed composting facility are imposed with Listed Activity 28 of the EIA Regulations, 2014. This Listed Activity was assessed in terms of the EIA Application.

I am satisfied that correct Waste Management Activity was applied for and subsequently included in the WML.

6.1.16. Permissible Waste

Infectious waste may not directly be disposed of to land and must be treated prior to disposal. Treatment methods include incineration, composting, rendering, etc. Condition 2.3 of the WML states *"Should the Facility wish to compost more than 500kg of hazardous waste per day, the Facility will need to obtain a Waste Management License prior to the treatment of these quantities of hazardous waste."*

I conclude that the proposed composting facility will be authorised to treat up to 100 tons of general waste and less than 500kg of infectious waste (hazardous waste) per day, as stated in Condition 2.3 of the WML.

6.1.17. Conditions in the WML/EA relating to Complaints

A complaints register will be kept at the composting facility. This will allow the Department and Applicant to be aware of complaints and assess how the operations at the composting facility are affecting people in the vicinity.

The complaints register will also form part of the record for internal, external and departmental audits, and will be evaluated. Furthermore, the complainants may still complain to the Environmental Health Practitioner of the District Municipality in the area, the Local Municipality or the Directorate: Waste Management at the DEA&DP.

Condition 6.10 of the WML further requires that all complaints must be attended to and addressed timeously. Non-compliance with any of the conditions of the WML will result in the matter being referred to the Directorate: Environmental Law Enforcement to enforce compliance with the conditions of the decisions.

I am satisfied that adequate measures are included in the WML and will be implemented to deal with complaints at the proposed composting facility. Failure will result in the matter being referred to the Directorate: Environmental Law Enforcement to enforce compliance with the conditions of the decisions.

6.1.18. Conditions relating to Odours/Flies

The baseline for the monitoring of odours and flies will be established upwind from the proposed composting facility, with detection sampling occurring nearby and downwind of the composting facility.

The current operations are effectively managing the flies and odours as the composting facility. Odours are earthy and typical of agricultural areas.

The Environmental Health Practitioner from the Cape Winelands District Municipality, after he had visited the current composting facility, reported that he was satisfied with management of the facility and there were no flies nor offensive odours emanating from it.

The Applicant has demonstrated that they have established an effective composting methodology that can control flies and odour, due to the fact that the heaps of compost are kept at the optimum temperature (55 °C) which kills pathogens as well as fly larvae. Furthermore, the Application, WML, EA and EMP contains mitigation measures for fly and odour control, temperature regulation, as well as noise, and has included 5 Standard Operating Procedures ("SOPs"), namely:

- SOP 1: Compost Process Flow/ Flow diagram;
- SOP 2: Removal and Delivery of By-products;
- SOP 3: Site Hygiene;
- SOP 4: pH and Temperature Testing and Recording; and
- SOP 5: Pest Control.

I am satisfied that these SOPs, as well as the history of the Applicants operating the current composting facility in a manner that does not lead to the proliferation of nuisance conditions, provided the assurance that the expansion of the current composting operations will not lead to uncontrolled, nuisance conditions.

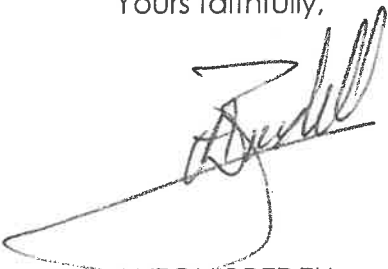
The Delegated Competent Authorities will appropriately respond to the complaints received from the public and investigate the matters accordingly. The proposed composting facility will be audited by the Department on a regular basis as stipulated in the WML conditions.

Non-compliance with the conditions of the EA and WML will result in the matter being referred to the Directorate: Environmental Law Enforcement to enforce compliance with the conditions of the decision.

Section 49A(1)(c) of the NEMA states that it is an offence to fail to comply with or to contravene a condition of an EA granted for a listed activity or specified activity or an approved environmental management programme.

7. The National Environmental Management Principles (set out in section 2 of the NEMA) which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment. In terms of the NEMA Principles, the effects of decisions on all aspects of the environment are to be taken into account. As such, the consideration, assessment and evaluation of the impacts of activities (disadvantages and benefits) must be undertaken, and decisions are to be appropriate in the light of such consideration and assessment.
8. I am satisfied that the development is the best practicable environmental option that will use abattoir by-products/waste together with organic waste to produce compost, which diverts waste stream away from the municipal waste disposal facility, thereby extending the life of the waste facility, providing compost to the farm and for resale commercially to farmers, and providing employment opportunities during the construction phase and operational phases.
9. In view of the above, the NEMA principles, compliance with the conditions stipulated in the EA and WML, and compliance with the conditions of the EMP, the proposed development will not be in conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA and any potentially detrimental environmental impacts resulting from the proposed development can be mitigated to acceptable levels.
10. I have discharged my decision-making powers when making this decision and I am thus *functus officio* in this regard. My decision is final and your only recourse, should you still be aggrieved by my decision, is to apply to the Western Cape High Court to review my decision.

Yours faithfully,



ANTON BREDELE

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

DATE: 31/8/2020

Copied to:

1. J.P. du Bois

Du Bois Prokureurs

email: hannes@jpdubois.co.za

2. L. Abrahams

Eco Impact

email: admin@ecoimpact.co.za

3. Mr. E. Hanekom Director (Waste Management)

email: eddie.hanekom@westerncape.gov.za

4. Mr. L. McBain-Charles Directorate: Waste Management

email: lance.mcbain-charles@westerncape.gov.za

5. Mr. Z. Toefy Director (Development Management Region 1)

email: zaahir.toefy@westerncape.gov.za

6. Ms. M. Oosthuizen Directorate: Development Management (Region1)

email: mareliez.oosthuizen@westerncape.gov.za



EA APPEAL REFERENCE: 14/3/1/B1/14/0451/20
WML APPEAL REFERENCE: 14/3/2/B1/14/0452/20

Perissea (Pty) Ltd, Johan Fourie, Le Roux Fourie
C/O Christo Reeders Attorneys C/O Richard Summers Inc.
Unit 123, Victoria Junction
57 Prestwich Street
De Waterkant
CAPE TOWN
8000

Email: hcr@craattorneys.co.za

Dear Sir/Madam

APPEALS LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE WASTE MANAGEMENT LICENSE AND ENVIRONMENTAL AUTHORISATION ISSUED FOR A COMPOSTING FACILITY AND FEEDLOT ON PORTION 6 OF THE FARM MIDDELBURG 10, ROBERTSON

Your Appeals lodged in terms of section 43(2) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") against the Waste Management License ("WML") and the Environmental Authorisation ("EA") issued for a composting facility and feedlot on Portion 6 of the Farm Middelburg 10, Robertson, refer.

After careful consideration of all the Appeals, as well as supporting documentation received, in terms of section 43(2) of the NEMA and regulation 7(3) of the 2014 National Appeal Regulations, I have decided to dismiss your Appeals against the WML and EA, and confirm the abovementioned EA and WML.

Please find attached the correspondence issued to the Applicant containing the abovementioned amendments and the reasons for my appeal decision.

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

Your interest in the future of our environment is appreciated.

Yours faithfully,

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

DATE: 31/8/2020

Copied to:

1. Mr. E. Hanekom Director: Waste Management
2. Mr. L. McBain-Charles Directorate: Waste Management
3. Mr. Z. Toefy Director (Development Management Region 1)
4. Ms. M. Oosthuizen Directorate: Development Management (Region1)

email: eddie.hanekom@westerncape.gov.za
email: lance.mcbain-charles@westerncape.gov.za
email: zaahir.toefy@westerncape.gov.za
email: mareliz.oosthuizen@westerncape.gov.za



EA APPEAL REFERENCE: 14/3/1/B1/14/0451/20
WML APPEAL REFERENCE: 14/3/2/B1/14/0452/20

The Municipal Manager
Langeberg Municipality
Private Bag X2
ASHTON
6715

Email: admin@langeberg.gov.za
MM@langeberg.gov.za

Dear Sir/Madam

APPEALS LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE WASTE MANAGEMENT LICENSE AND ENVIRONMENTAL AUTHORISATION ISSUED FOR A COMPOSTING FACILITY AND FEEDLOT ON PORTION 6 OF THE FARM MIDDELBURG 10, ROBERTSON

Your Appeal lodged in terms of section 43(2) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") against the Waste Management License ("WML") issued for a composting facility and feedlot on Portion 6 of the Farm Middelburg 10, Robertson, refer.

After careful consideration of all the Appeals, as well as supporting documentation received, in terms of section 43(2) of the NEMA and regulation 7(3) of the 2014 National Appeal Regulations, I have decided to dismiss your Appeal against the WML and confirm the abovementioned WML.

Please find attached the correspondence issued to the Applicant containing the abovementioned amendments and the reasons for my appeal decision.

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

Your interest in the future of our environment is appreciated.

Yours faithfully

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

DATE: 31/8/2020

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email: lance.mcbain-charles@westerncape.gov.za
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EA APPEAL REFERENCE: 14/3/1/B1/14/0451/20
WML APPEAL REFERENCE: 14/3/2/B1/14/0452/20

Hanneré Jooste & Louis Jordaan
Remaining Extent of the Farm Vinke Rivier No.8
ROBERTSON
6705

Email: Samantha@ndvlaw.co.za

Dear Hanneré Jooste & Louis Jordaan

APPEALS LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE WASTE MANAGEMENT LICENSE AND ENVIRONMENTAL AUTHORISATION ISSUED FOR A COMPOSTING FACILITY AND FEEDLOT ON PORTION 6 OF THE FARM MIDDELBURG 10, ROBERTSON

Your Appeal lodged in terms of section 43(2) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") against the Waste Management License ("WML") and the Environmental Authorisation ("EA") issued for a composting facility and feedlot on portion 6 of the Farm Middelburg 10, Robertson, refer.

After careful consideration of all the Appeals, as well as supporting documentation received, in terms of section 43(2) of the NEMA and regulation 7(3) of the 2014 National Appeal Regulations, I have decided to dismiss your Appeals against the WML and EA, and confirm the abovementioned WML and the EA.

Please find attached the correspondence issued to the Applicant containing the abovementioned amendments and the reasons for my appeal decision.

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

Your interest in the future of our environment is appreciated.

Yours faithfully,

ANTON-BREDELL
MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

DATE: 31/8/2020

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1. Mr. E. Hanekom Director: Waste Management
2. Mr. L. Mcbain-Charles Directorate: Waste Management
3. Mr. Z. Toefy Director (Development Management Region 1)
4. Ms. M. Oosthuizen Directorate: Development Management (Region1)

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