

Addressed to:

Mr Z Hassam
 Appeals Directorate
 Department of Environmental Affairs
ZHassam@environment.gov.za

Date: 28 August 2015

Your ref: 12/12/20/1397/1&3

Our ref: **AARMSTRONG/
 MAT3639**

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Ms A Motalane
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By e-mail

Dear Sirs

**Rainbow Farms (Pty) Ltd: Response to Eskom & Acer submissions
 Eskom Proposed Isundu 765/400 kV Substation and Turn-in transmission
 Lines**

We refer to the responding statements by Acer and Eskom dated 24 August 2015 and 26 August 2015 respectively. We lodge herewith an answering statement in respect of new "evidence" provided by Eskom and /or Acer, more specifically Eskom.

The core of the matter relating to Rainbow's application for condonation is whether or not notice of Environmental Authorisation ("EA") was brought to the attention of the Interested and Affected Parties ('IAP'), in this instance Rainbow Farms. That notification would then have triggered Rainbow's right to lodge an appeal. In absence of such notification, that right to lodge an appeal would have been denied to Rainbow.

Rainbow was simply not provided written notification, and the EA did not come to its attention. There is no proven evidence in the documents currently available to Rainbow or supplied by ACER and Eskom in their responding statements that Rainbow received or was sent this notification. Rainbow in all good faith can say that no such notification was received.

Further, there was no notice of the Environmental Authorisation placed in the Natal Witness as per the annexures provided by Eskom. If an advert was placed in the Sunday Tribune it was unlikely that such notice would have come to a Rainbow

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official's attention on a Sunday. The other publications would not have come to the attention of Rainbow.

Even if this had been the case this in itself would not have constituted proper notice of the EA to Rainbow under the NEMA EIA regulations or under the directives from the DEA.

The cover letters of the Environmental Authorisations signed by Mr Bapela of the Department of Environmental Affairs prescribed the manner in which notice of the decision was to be given to Interested and Affected Parties, that is, "*in writing and within 12 days of the date of the EA, providing notice of the decision and the provisions governing the submission of appeals.*" This indicates more than notices published in a Sunday newspaper that may or may not reach the attention of Rainbow. There is no evidence whatsoever to prove that Rainbow was given *written notice* of this EA.

Rainbow would have not intentionally not engaged in this project which would have resulted in severe detriment to it, and it would not intentionally have not appealed the decision at the time.

The issues relating to whether or not proper consultation had taken place during the process, and the impacts resulting from the proposal, goes to the merits of the appeal.

In new information, Eskom proposes that the condonation be declined on the basis that the issues can be dealt with in the current EIA process. The current EIA process deals with a new substation on the boundary of Rainbow's farm. Rainbow is engaging in that process which has been specifically brought to Rainbow's attention as it is not a linear project, as opposed to the impugned project. The current EIA does not deal with the corridor that is to be constructed through one of Rainbow's largest chicken laying and breeding housing operations that has been approved under the impugned EA. The amendment application deals primarily with a change in the Kv lines and the turn-ins to the site. It does not deal with the locality of the corridor.

Accordingly whilst Rainbow wants to engage with Eskom to deal with the issues that are inextricably linked, and whilst Rainbow has requested this engagement from the moment that this development came to its attention, from a legal perspective the appeal, and the condonation for the appeal, is disassociated from the current applications, and has to be decided independent from the current applications that are being run.

In the event of Rainbow and Eskom arriving at a solution in the meantime that may be approved by the independent EAP and the DEA so be it, but it does not deny

Rainbow the right of a proper hearing of an appeal and the condonation application to bring that appeal on the impugned EA.

The allegations of falsehood and misunderstandings in the Acer response are denied. The facts are clearly demonstrated in the condonation for appeal and the appeal itself.

We await the honorable Minister's decision on the condonation application.

Yours sincerely,



Aldine Armstrong
Eversheds