



**REFERENCE:** 14/1/1/E1/4/3/1/0277/15

**ENQUIRIES:** Najah Ben Jeddou

**BY EMAIL**

Email: [johnfaure@wol.co.za](mailto:johnfaure@wol.co.za)

Email: [david@efgeng.co.za](mailto:david@efgeng.co.za)

Vergenoegd Trust

P O Box 3800

DURBANVILLE

7551

## COMPLIANCE NOTICE

Attention: Mr John Faure

Dear Mr Faure

**COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 IN RESPECT OF A CONTRAVENTION OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT AND THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 2008**

1. The Department's Pre-Compliance Notice issued on 8 January 2016, your response to the Pre-Compliance Notice dated 18 April 2018, the Freshwater

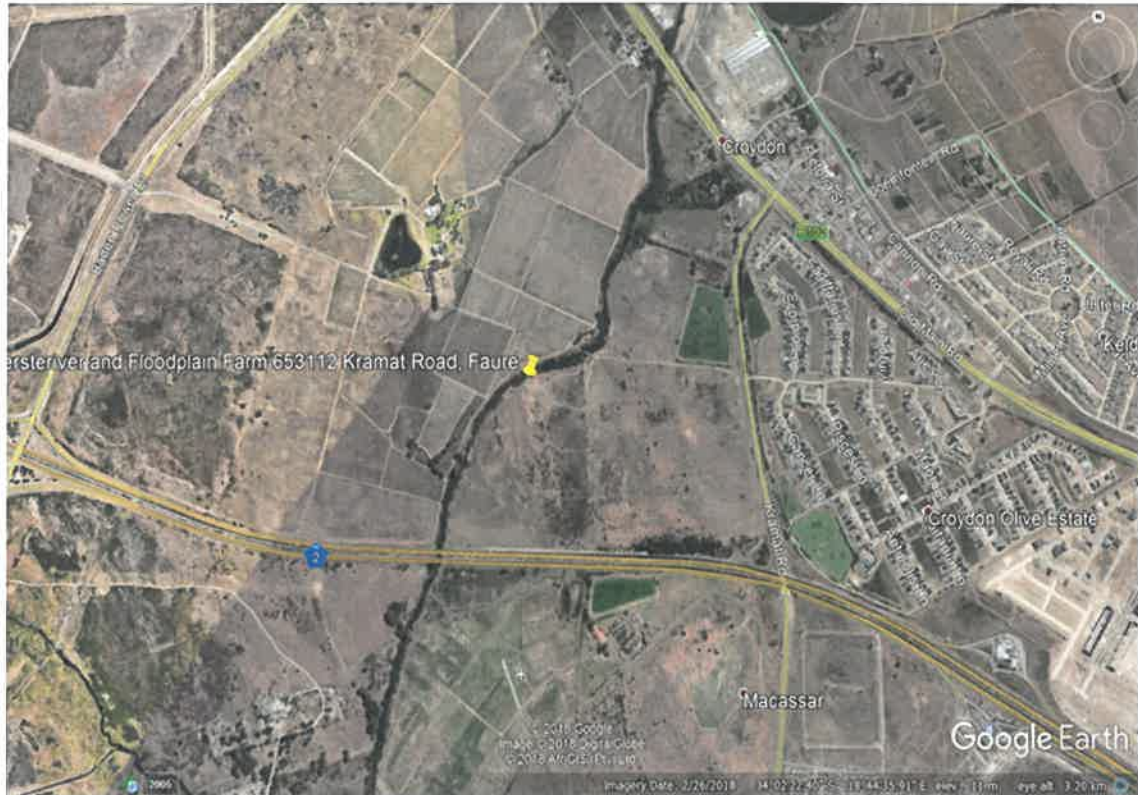
Impact Assessment and Rehabilitation Plan dated 23 March 2018 and the Invasive Vegetation Management and Control Plan dated April 2018, have reference.

2. Having considered your representations, the Freshwater Impact Assessment and Rehabilitation Plan and the Invasive Vegetation Management and Control Plan and all the other relevant evidence, I, Mr Achmad Bassier, in my capacity as an Environmental Management Inspector Grade 1, hereby issues John Faure representing Vergenoegd Trust with a Compliance Notice in terms of section 31L of the National Environmental Management Act, 1998 ("NEMA").
3. This Compliance Notice relates to non-compliance with section 19 and 20 of the National Environmental Management: Waste Act, 2008 (NEM: WA) and with the provisions of section 24F of the NEMA. No activity listed in the Waste Management Activities of Government Notice 921 of 29 November 2013 and the Environmental Impact Assessment (EIA) Regulations Listing Notice 1 of 2014, as amended, may commence without a Waste Management Licence (WML) and Environmental Authorisation (EA) from the competent authority.

#### **Details of conduct constituting non-compliance**

4. During an investigation into allegations of the commencement of a listed activity in terms of the NEM: WA and NEMA site inspections were conducted at Farm 653/12, Vergenoed Wine Estate, Faure by an Environmental Management Inspector from the Department's Directorate: Environmental Law Enforcement on 6 September 2015, 23 June 2016 and 16 July 2018, and it was confirmed that you have commenced with the infilling of the Eerste River and the floodplain without the requisite WML and EA (see attached photographic evidence and coordinates).

GPS co-ordinates: 34° 02' 22. 40" S 18° 44' 35.91" E.



Aerial map: Location of alleged illegal activity.

5. On considering the evidence before me there are reasonable grounds to believe that you have commenced the following activities, listed in terms of the EIA Regulations Listing Notice 1 of 2014, as amended, without an EA.

EIA Regulations Listing Notice 1 of 2014 (Government Notice R983)

Activity no. 19

*The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit,*

*pebbles or rock of more than 5 cubic metres from—*

- (i) a watercourse;**
- (ii) the seashore; or*
- (iii) the littoral active zone, an estuary or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater—*

*but excluding where such infilling, depositing, dredging, excavation, removal or moving—*

*(a) will occur behind a development setback;*

*(b) is for maintenance purposes undertaken in accordance with a maintenance management plan; or*

*(c) falls within the ambit of activity 21 in this Notice, in which case that activity applies.*

6. The Department wishes to advise that on 4 December 2014, the Minister of Environmental Affairs promulgated the 2014 EIA Regulations. These Regulations came into effect on 8 December 2014 and was amended on 7 April 2017. Accordingly, activities which commenced prior to 7 April 2017 and which are similarly listed in the 2014 Regulations require prior environmental authorisation. The abovementioned activity (i.e. Activity 19) was therefore amended as follows:

EIA Regulations Listing Notice 1 of 2014:

Activity no. 19:

*The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse but excluding where such infilling, depositing, dredging, excavation, removal or moving—*

*(a) will occur behind a development setback;*

*(b) is for maintenance purposes undertaken in accordance with a maintenance management plan; or*

*(c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;*

- (d) occurs within existing ports of harbours that will not increase the development footprint of the port or harbour; or
- (e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies.



Photo 1: View of infilling within the Eerste River and raising of its banks.



Photo 2: View of the area Eerste River floodplain filled with waste.

7. Please be advised that your proposed remedial measures will trigger listed Activity 19 mentioned in paragraph 5 above. As a result, this Compliance Notice hereby instructs you to:
  - 7.1 Implement the remediation measures as outlined in the rehabilitation plan dated 21 September 2017 within **14 (fourteen) calendar days** from the date of receipt of this notice;
  - 7.2 A minimum of **seven calendar days'** notice, in writing, must be given to this Directorate before commencement of the approved rehabilitation activities.
  - 7.3 Appoint a suitable and qualified Environmental Control Officer (ECO) to supervise all rehabilitation work undertaken and monitor compliance during and post completion of the rehabilitation work;
  - 7.4 Notify this Department once the rehabilitation work has been completed and submit an audit report within **30 (thirty) calendar days** from the date of completion of the work in order for the Directorate to conduct a compliance inspection.
  - 7.5 A final audit report must be compiled and submitted once the site has been fully rehabilitated to its original condition to CapeNature for comment and for this Directorate to conduct a compliance inspection.
8. Approval of the above report and plan by the Department does not remedy the unlawful commencement of the above activity, which remains unlawful in terms of section 67(1)(a) of the NEM: WA.
9. If the above report and plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.

10. If you wish to continue with the listed activity you may apply for environmental authorisation by way of a section 24G application. However, such application does not constitute permission to continue with the listed activity, which remains unlawful unless environmental authorisation is granted.
11. Notwithstanding the section 24G application, the Department may issue a Compliance Notice and/or commence criminal proceedings should circumstances so require.

### **Varying this Compliance Notice**

12. If you would like me to vary this Compliance Notice or extend the period to which it relates, you may make representations to me, in writing, to do so.

### **Failure to comply with this Compliance Notice (section 31N of the NEMA) and related offences in terms of the NEMA**

13. In terms of section 67(1) (a) of the NEM: WA it is an offence to commence a listed activity without a WML. A person convicted of such an offence is liable to a fine not exceeding R10 million or 10 years' imprisonment or both such fine and such imprisonment.
14. Furthermore, failure to comply with a Compliance Notice is an offence in terms of section 49A(1)(k). A person convicted of such an offence is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both instances to both such fine and such imprisonment.
15. Any non-compliance with the Compliance Notice must be reported to the Minister, who may:

- 15.1 revoke any permit or authorisation to which this Compliance Notice relates; and/or
- 15.2 take any steps necessary to ensure compliance with the provisions of the law, permit or authorisation to which this Compliance Notice relates and recover from you the cost of doing so.

**Procedure for lodging an objection to this Compliance Notice (section 31L and 31M of the NEMA)**

16. If you wish to lodge an objection to this Compliance Notice, you may do so by making representations, in writing, to the Provincial Minister of Environmental Affairs and Development Planning (the Minister) within 30 days of receipt of this Compliance Notice.
17. You may also make representations, in writing, to the Minister to suspend the operation of this Compliance Notice pending finalisation of the objection.
18. The objection must be in writing and forwarded to the Appeal Administrator, Mr Jaap de Villiers at the contact details below and must be accompanied by a statement detailing the grounds of the objection and supporting documentation, if any.

By post: Western Cape Ministry of Local Government, Environmental Affairs and Development Planning  
Private Bag X9186  
CAPE TOWN  
8000

By facsimile: (021) 483 4174

By hand: Attention: Mr Jaap de Villiers (Tel: 021 483 3721)  
Room 809  
8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001



By email: [Jaap.DeVilliers@westerncape.gov.za](mailto:Jaap.DeVilliers@westerncape.gov.za)

19. Irrespective of any representations you may make to me or to the Minister, you must comply with this Compliance Notice within the time period stated in the Compliance Notice, unless the Minister agrees to suspend the operation of this Compliance Notice.



**Achmad Bassier**

**Director: Environmental Law Enforcement**

**Grade 1 Environmental Management Inspector**

**Date:** 31/01/2019

Cc:

(1) Mr John Faure Co-Owner:

Email: [johnfaure@wol.co.za](mailto:johnfaure@wol.co.za)

(2) Euonell Visagie:

Email: [eg@gnec.co.za](mailto:eg@gnec.co.za)

(3) Ms Stephanie Coetzee (CoCT)

Email: [Stephanie.Coetzee@capetown.gov.za](mailto:Stephanie.Coetzee@capetown.gov.za)

(4) Lauren King (CoCT)

Email: [Lauren.King@capetown.gov.za](mailto:Lauren.King@capetown.gov.za)

(5) Rhett Smart

Email: [rsmart@capenature.co.za](mailto:rsmart@capenature.co.za)