

Environmental Protection Act 1986

Section 65

**ENVIRONMENTAL PROTECTION NOTICE
AMENDMENT 1 Dated 1 July 2019**

Reference No: DWERDG672/18

PERSON TO WHOM THIS NOTICE IS ISSUED:

Harvey Fresh (1994) Ltd

ACN 065 591 219

In its capacity as the holder of the licence L4404/1991/15 granted under the Part V
Division 3 of the Act
Level 1, 1318 Hay Street,
WEST PERTH WA 6005

AND

Guiseppe Saru Morabito

In her capacity as owner of Lots 187 and 189 on Plan 202110
283 Third Street,
HARVEY 6220

AND

HARVEY FRESH (1994) LTD

ACN 065 591 219

In its capacity as owner of Lot 200 on Plan 66494
Level 1, 1318 Hay Street,
WEST PERTH WA 6005

AND

L & A Sorgiovanni PTY LTD

ACN 169 755 195

In their capacity as owner of Lot 1 on Diagram 4786
Registered address
PARKINSON & CO PTY LTD
Level 1, 322 Hay Street
SUBIACO WA 6008

AND

ORANGE SHED PTY LTD

ACN 169 298 800

In its capacity as owner of Lot 20 on Plan 2344
Registered address
Mgi Parkinson
Level 1, 322 Hay Street
SUBIACO WA 6008

AND

PARMALAT AUSTRALIA PTY LTD

ACN 072 928 879

In its capacity as owner of Lot 22 on Plan 2344

Level 5, 35 Boundary Street,

SOUTH BRISBANE QLD 4101

PREMISES TO WHICH THIS NOTICE RELATES

The premises subject of the Environmental Protection Notice (Notice) is situated on Third Street in Harvey on whole of:

- Lots 187 & 189 on Plan 202110, as shown on Certificate of Title Volume 1619 Folio 278;
- Lot 200 on Plan 66494, as shown on Certificate of Title Volume 2744 Folio 600;
- Lot 1 on Diagram 4786, as shown on Certificate of Title Volume 1749 Folio 55;
- Lot 20 on Plan 2344, as shown on Certificate of Title Volume 2842 Folio 55; and
- Lot 22 on Plan 2344, as shown on Certificate of Title Volume 2842 Folio 56,

which are subject to the Licence (as defined in Appendix 2: Definitions of this Notice).

("the Premises" as defined in Appendix 2: Definitions of this Notice).

REASONS FOR WHICH THIS NOTICE IS ISSUED

This Notice is served because I reasonably suspect that there are, and are likely to be, emissions of nitrogen and phosphorus in wastewater from the Premises, and the emission of that nutrient rich wastewater:

(a) has caused and is likely to cause pollution, being a direct alteration of the environment to its detriment or degradation by the contamination of:

- (i) the soil on or adjacent to the Premises; and
- (ii) the groundwater on, or adjacent to, the Premises,

(b) is likely to cause pollution, namely a direct alteration of the environment:

- (i) to its detriment or degradation by contamination of the Swan Coastal Plain within the policy area defined in clause 3, read with clause 4 and Schedule 1 of the Environmental Protection (Peel Inlet – Harvey Estuary) Policy 1992, including the Harvey River; and
- (ii) to the detriment of an environmental value, being the beneficial use of the Harvey River catchment, a part of the Swan Coastal Plain within the policy area defined in clause 3, read with clause 4 and Schedule 1 of the Environmental Protection (Peel Inlet – Harvey Estuary) Policy 1992, including the Harvey River

("the Pollution").

These reasons are supported by the following:

- The Annual Environmental Report relating to Harvey Fresh (1994) Ltd and its operations under the Licence for the 2016/2017 reporting period, received by DWER on 29 September 2017, advised of a total phosphorus discharge of 84 kg/ha/yr to emission points L1 and L2 (as depicted in Appendix 1: Maps to this Notice) for the reporting period calculated over an area of 74 ha. Recalculation of the discharge volumes with the correct area of 19 ha for L1 and L2 implies a discharge of 327 kg/ha of total phosphorus, considerably exceeding the limit of 9 kg/ha/yr in condition 2.2.2 of the Licence. A discharge of total nitrogen equated to 545 kg/ha exceeding a limit of 250 kg/ha/yr in condition 2.2.2 of the Licence.
- A review of annual data submitted to the predecessors of DWER for the previous 6 annual reporting periods (1 August to 31 July) to 2016/2017 indicates exceedances of the limit of 9 kg/ha/yr of total phosphorus in the Licence. The discharges of total phosphorus over these reporting periods range from 74 kg/ha/yr to 794 kg/ha/yr.
- Laboratory analysis data for the 2017/2018 reporting period calculated as of 14 May 2018 indicates a discharge of total phosphorus equating to 345 kg/ha to L1 and L2 emission points (as depicted in Appendix 1: Maps to this Notice), considerably exceeding the limit of 9 kg/ha/yr and a discharge of 914 kg/ha of total nitrogen exceeding the limit of 250 kg/ha/yr in condition 2.2.2 of the Licence.
- DWER Aquatic Science Branch advice identifies the export of significant quantities of nitrogen and phosphorus from the Premises emission points L1 and L2 (as depicted in Appendix 1: Maps to this Notice) to the groundwater and the Harvey River within the policy area defined in clause 3, read with clause 4 and Schedule 1 of the Environmental Protection (Peel Inlet – Harvey Estuary) Policy 1992.
- These phosphorus emissions are having a detrimental impact on the ecosystem associated with the Environmental Protection (Peel Inlet – Harvey Estuary) Policy 1992.
- The total nitrogen and total phosphorus emissions have caused the Pollution.

I am satisfied that because:

- **Harvey Fresh (1994) Ltd** is the Licensee and occupier from which the emission emanated; and
- **Harvey Fresh (1994) Ltd, Guiseppe Sara Morabito, L & A Sorgiovanni PTY LTD, ORANGE SHED PTY LTD and PARMALAT AUSTRALIA PTY LTD** are the owners of the Premises from which the emission emanated;

that you are the persons who caused the emission and you are the appropriate persons to whom to give this Notice.

REQUIREMENTS OF THIS NOTICE

The requirements of this notice are amended by the removal of words with a strikethrough and the insertion of that underlined. Completed and/or due dates passed are marked with the timeframes removed.

Each Owner and Occupier (as defined in Appendix 2: Definitions of this Notice) of the Premises who is bound by this Notice is required to do the following.

1. Take the following measures, which I consider necessary to prevent, control and abate the emission and the Pollution.

- 1.1. From ~~the date this Notice is given~~ 5 December 2018, cease all discharge of wastewaters to emission areas L1 and L2 (as depicted in Appendix 1: Maps of this Notice) of the Premises.
- 1.2. From ~~the date this notice is given~~ 5 December 2018, ensure the discharge of wastewaters only takes place to emission area L3 and L4 (as depicted in Appendix 1: Maps of this Notice) of the Premises, unless additional discharge areas are approved under Part V Division 3 of the *Environmental Protection Act 1986*.
- 1.3. From ~~the date this notice is given~~ 5 December 2018, ensure that the following emission limits to emission areas L3 and L4 (as depicted in Appendix 1: Maps of this Notice) on the Premises are in place until 31 July 2019 and for annual periods starting 1 August to 31 July annually thereafter until further notice.

Emission limits to emission areas L3 and L4 (as depicted in Appendix 1: Maps of this Notice) of the Premises			
Emission area reference on Premises	Parameter	Limit (including units)	Averaging Period
L3-L4	Total nitrogen	250 kg/ha	Annual
	BOD	30 kg/ha	Daily
L3	Total phosphorus	30 kg/ha	Annual
L4	Total phosphorus	9 kg/ha	Annual (as of 1 August 2019)

- 1.4. From ~~the date this Notice is given~~ 5 December 2018, sample and monitor emissions to land at emission area reference locations L3, L4 and the wastewater storage pond on the Premises as depicted in Appendix 1: Maps of this Notice in accordance with relevant sampling standards (as defined in Appendix 2: Definitions of this Notice) on a fortnightly basis (as defined in Appendix 2: Definitions of this Notice), at least 10 calendar days apart.
- 1.5. From ~~the date this Notice is given~~ 5 December 2018, on a fortnightly basis (as defined in Appendix 2: Definitions of this Notice), calculate the emission loading of discharges to emission areas L3 and L4 on the Premises (as depicted in Appendix 1: Maps of this Notice) utilising monitoring results received from laboratory analysis.
- 1.6. From ~~4~~ 5 December 2018, provide in writing (as defined in Appendix 2: Definitions of this Notice) monitoring results and calculations required by requirement 1.5 to the CEO on a quarterly basis within the 7 day period (as defined in Appendix 2: Definitions of this Notice) prior to:
- 31 January
 - 30 April
 - 31 July
 - 31 October
- 1.7. Monitoring of ambient surface water quality is to be undertaken on a monthly basis, beginning within one month of ~~the date this Notice is given~~ 5 December 2018 (but not on days 29, 30 or 31 of the relevant month), and thereafter taking place within

the 7 days before the monthly anniversary date on which the monitoring began, in the proximity of the monitoring point reference and location below and as depicted in 'Appendix 1: Maps' of this Notice in accordance with relevant sampling standards (as defined in Appendix 1: Definitions of this Notice).

Sample point	Latitude	Longitude
SWQ-1	-33.0665	115.9029
SWQ-2	-33.0587	115.8933
SWQ-3	-33.0680	115.8987
SWQ-4	-33.0610	115.8904
SWQ-5	-33.0587	115.8933

1.8. Each sample of ambient surface water quality taken during the monitoring in requirement 1.7 of this Notice is to be analysed by a NATA accredited laboratory (as defined in Appendix 2: Definitions of this Notice). Samples must be delivered to the NATA accredited laboratory within relevant holding times and requirements to such laboratory to be analysed for the following:

- pH
- Electrical conductivity
- Organic Carbon
- Total nitrogen
- Total phosphorus
- Soluble reactive phosphorus
- Filterable reactive phosphorus
- Nitrite and nitrate
- Ammonium

1.8.1. Monthly ambient surface water quality results are to be provided in writing to the CEO by 28 August annually and is to include a comparison of previous results.

1.9. Provide in writing to the CEO by ~~the first annual anniversary of the date in which this Notice is given~~ 5 December 2019 the permeability (as defined in Appendix 2: Definitions in this Notice) of the current treated wastewater storage pond on the Premises (as depicted in Appendix 1: Maps of this Notice) (the pond).

1.10.

If the pond is not impermeable;

1.10.1. Provide in writing to the CEO ~~within 14 days following the first annual anniversary date in which this Notice is given~~ by 19 December 2019 a management plan to ensure emissions from the pond are ceased by ~~the second annual anniversary of the date in which this Notice is given~~ 5 December 2020.

The management plan is to include:

- 1.10.1.1. The method of which will be implemented to ensure emissions cease
- 1.10.1.2. An expected timeframe of implementation
- 1.10.1.3. Contingency for wastewater storage whilst works are undertaken

2. Investigate the extent and nature of the emission and its consequences, and prepare an investigation report and a plan for the prevention, control or abatement of the emission and the Pollution as follows.

2.1. ~~Within 60 days from the day this Notice is given,~~ The Owner and Occupier must ~~engage and~~ retain an Environmental Consultant (as defined in Appendix 2 of this Notice) to undertake the sampling requirements of requirement 2.2, the modelling

requirements of requirement 2.4 and prepare an investigation report and remediation plan to be provided in writing to the CEO in accordance with requirement 2.7.

- 2.2. ~~Within 21 Days of retaining an Environmental Consultant in accordance with requirement 2.1, that~~ The retained Environmental Consultant is to undertake the following sampling in accordance with relevant sampling standards (as defined in Appendix 2: Definitions of the Notice):

2.2.1. For emission areas L1 and L2:

- 2.2.1.1. Take 1 bulk sample composed of 30 soil cores taken from across each emission area to a depth of 10 cm, from within flood irrigation channels only;
- 2.2.1.2. All cores required of requirement 2.2.1.1 are to be evenly distributed throughout the emission areas, taken from within flood irrigation channels only and recorded by GPS location;
- 2.2.1.3. Take three (3) deeper cores in each emission area sampling at ~~0-10cm, 10-20cm, 20-30cm, 30-40cm, 40-50cm, 50-60cm, 60-70cm, 70-80cm, 80-90cm and 90-100 cm depths respectively~~ intervals 0-10cm, 10-30cm, 30-60cm and 60-100cm, or until the duplex clay layer is encountered, to be analysed individually (alternative sampling may take place at the differing soil profile layers (horizons) to the depth of 100cm, or until the duplex clay layer is encountered, subject to the provision of evidence of soil layer profiles within reporting requirements of requirement 2.6);
- 2.2.1.4. The three deeper cores required of requirement 2.2.1.3 are to be taken from within flood irrigation channels at a distance of no more than 5 metres from a discharge spigot location with a separation of minimum two (2) flood irrigation channels between cores;
- 2.2.1.5. Estimate depth to groundwater for each emission area by hand auguring. Alternative methods for determining depth to groundwater may be considered appropriate upon application to the CEO with the inclusion of justification.

2.2.2. For emission areas L3 and L4:

- 2.2.2.1. Take 1 bulk sample composed of 30 soil cores taken from across each emission area to a depth of 10 cm, from within flood irrigation channels only;
- 2.2.2.2. All cores required of requirement 2.2.2.1 are to be evenly distributed throughout the emission areas, taken from within flood irrigation channels only and recorded by GPS location;
- 2.2.2.3. Take three (3) deeper cores in each emission area sampling at ~~0-10cm, 10-20cm, 20-30cm, 30-40cm, 40-50cm, 50-60cm, 60-70cm, 70-80cm, 80-90cm and 90-100 cm depths respectively~~ intervals 0-10cm, 10-30cm, 30-60cm and 60-100cm, or until the duplex clay layer is encountered, to be analysed individually (alternative sampling may take place at the differing soil profile layers (horizons) to the depth of 100cm, or until the duplex clay layer is encountered, subject to the provision of evidence of soil layer profiles within reporting requirements of requirement 2.6);
- 2.2.2.4. The three deeper cores required of requirement 2.2.2.3 are to be taken from within flood irrigation channels at a distance of no more than 5 metres from a discharge spigot location with a separation of minimum two (2) flood irrigation channels between cores;
- 2.2.2.5. Estimate depth to groundwater for each emission area by hand auguring. Alternative methods for determining depth to groundwater may be considered appropriate upon application to the CEO with the inclusion of

justification.

2.3. The Owner and Occupier must ensure that all soil samples taken in accordance with requirement 2.2 must be analysed by a NATA accredited laboratory. Samples must be delivered to the NATA accredited laboratory within relevant holding times and requirements to such laboratory to be analysed for the following:

- *Colwell P
- *Nitrate/nitrite N
- *NH₃ N
- *TKN
- Total N
- Organic carbon (Walkley Black)
- Total P
- pH (CaCl₂)
- Phosphorus buffering index
- Phosphorus retention index
- *Adsorption coefficient
- *Adsorption exponent
- *Saturated hydraulic conductivity
- *Bulk density
- *Air dry %
- *Lower storage limit
- *Drained upper limit
- *Saturated water content

(analytes marked with a ' * ' are required to run a MEDLI (Model for Effluent Disposal Using Land Irrigation) program and alternate modelling programs/software may require additional/alternate parameters and/or alternate analysis spatial distribution in which case adjustment is authorised upon notification).

2.4. For each emission area, a MEDLI (Model for Effluent Disposal Using Land Irrigation), is to be applied (note: the model is to be applied to determine and allow examination of the long-term effect of the effluent irrigation). Alternative modelling methods may be considered appropriate upon application to the CEO with the inclusion of justification.

2.5. Sampling of emission areas L3 and L4 referred to in requirement 2.2.2, associated analysis in requirement 2.3 and modelling in requirement 2.4 is to be completed annually within one month of 28 August, the date in which the sampling, analysis and modelling is required to be provided to the CEO in requirement 2.8.

2.6. The investigation report and remediation plan prepared by the Environmental Consultant pursuant to requirement 2.1 of this Notice must:

- 2.6.1. provide details and results of the MEDLI modelling (or alternative modelling authorised by the CEO upon application) on emission areas L1 to L4 including the export quantities of nitrogen and phosphorus;
- 2.6.2. identify the possible methodologies and timeframes for remediation of emission areas L1 and L2 so that export of nitrogen and phosphorus to groundwater will cease;
- 2.6.3. state the methodology proposed to be used to prevent, control or abate the emissions from L1 and L2 and the justification for this methodology.

2.7. The investigation report and remediation plan must be provided in writing to the CEO within 60 ~~145~~ days from the day after engaging the Environmental Consultant identified in requirement 2.1 of this Notice.

2.7.1. If the CEO considers the investigation report and remediation plan provided under requirement 2.7 to be sufficient for the purpose of this Notice, the CEO will approve the remediation plan and notify the Owner and Occupier of his decision in writing.

2.7.2. If the CEO considers the information provided in the investigation report and remediation plan to be insufficient for the purpose of this Notice, the CEO may provide in writing a direction to the Owner and Occupier describing the further information required to render the investigation report and remediation plan sufficient for the purpose of this Notice.

2.7.3. If the investigation report and remediation plan is subject to a direction for further information under requirement 2.7.2, the Owner must, within 21 days from the day after the receipt of the direction provided in paragraph 2.7.2, ensure that the remediation plan is amended and provided in to the CEO in accordance with that direction for the CEO's approval under paragraph 2.7.1.

2.8. Annual sampling, analysis and modelling requirements referred to in requirement 2.5 of this Notice (pro rata for the first annual reporting period from the date this Notice is given) are to be provided in writing to the CEO by 28 August annually and is to include a comparison of previous results and modelling highlighting decreasing ability to retain discharged nutrients and any increasing potential of nutrient export

3. Implementation of Approved Remediation Plan

3.1. Remediation of the Premises, in accordance with the approved investigation report and remediation plan identified in requirement 2.7.1, must be completed within timeframes agreed by the CEO on approval of the remediation plan.

4. Reporting

4.1. Within 14 days from the day after the completion of the remediation identified in requirement 3.1, the Owner must provide in writing a written report to the CEO on the remediation of the Premises for the CEO's approval. This report must include as a minimum:

4.1.1. how the approved remediation plan was implemented;

4.1.2. current details of wastewater discharges, nutrient levels and the quantity of nutrient export from emission areas;

4.1.3. any alterations to the approved remediation plan and the reasoning for the alteration;

4.1.4. copies of all receipts, invoices, orders or any other documentation relating to the removal of any waste from the Premises in order to comply with the requirements of this Notice must be attached to the report; and

4.1.5. results from all sampling undertaken in implementation of the approved remediation plan must be attached to the report.

4.2. If the CEO considers the remediation of the Premises to be sufficient for the purposes of this Notice, the CEO will approve the remediation and notify the Owner and Occupier of his decision.

4.3. If the CEO considers the remediation of the Premises to be insufficient for the purpose of this Notice, the CEO will provide the Owner and Occupier with his reasons and may provide in writing a direction to the Owner and Occupier

describing the further remediation action required to render the remediation sufficient for the purpose of this Notice.

- 4.4. If the remediation of the Premises is subject to a direction for further remediation action under requirement 4.3 of the Notice, the Owner and Occupier must, within directed timeframes after the receipt of the direction provided in requirement 4.3, ensure that the further remediation action is undertaken in accordance with that direction for the CEO's approval under paragraph 4.2.



Mike Rowe

Chief Executive Officer
Department of Water and Environmental Regulation

~~November 2018~~ 2 July 2019

**IMPORTANT
NOTES**

**A PERSON WHO IS BOUND BY THIS NOTICE AND WHO DOES
NOT COMPLY WITH THIS NOTICE COMMITS AN OFFENCE.**

A person who is aggrieved by a requirement contained in this Notice may within 21 days of being given this Notice lodge with the Minister for Environment an appeal in writing setting out the grounds of that appeal.

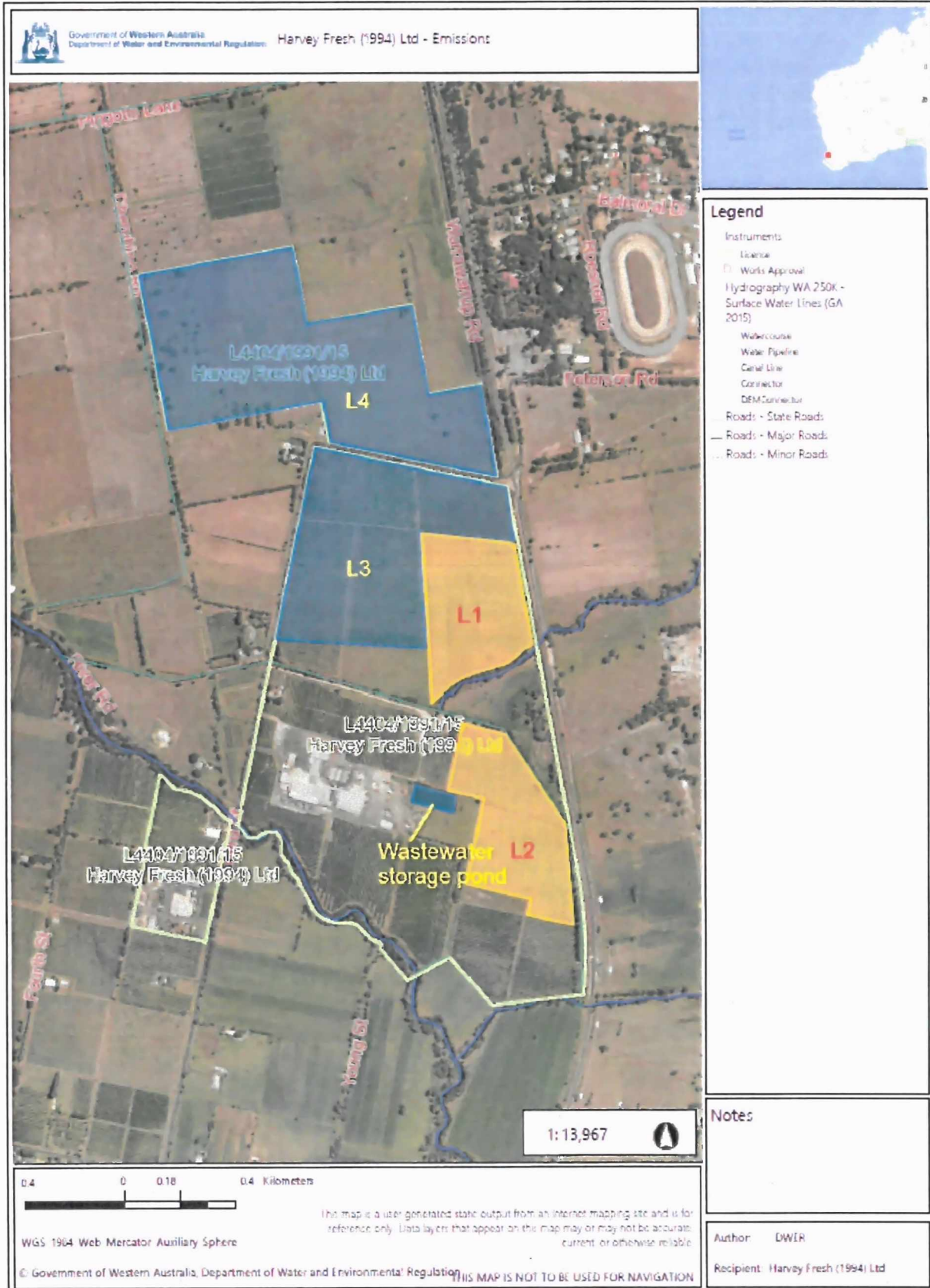
Any other person who disagrees with a requirement contained in this Notice may within 21 days of the making of that requirement lodge with the Minister for Environment an appeal in writing setting out the grounds for that appeal.

**PENDING THE DETERMINATION OF AN APPEAL REFERRED TO
ABOVE THE RELEVANT REQUIREMENTS CONTAINED IN THIS
NOTICE CONTINUE TO HAVE EFFECT.**

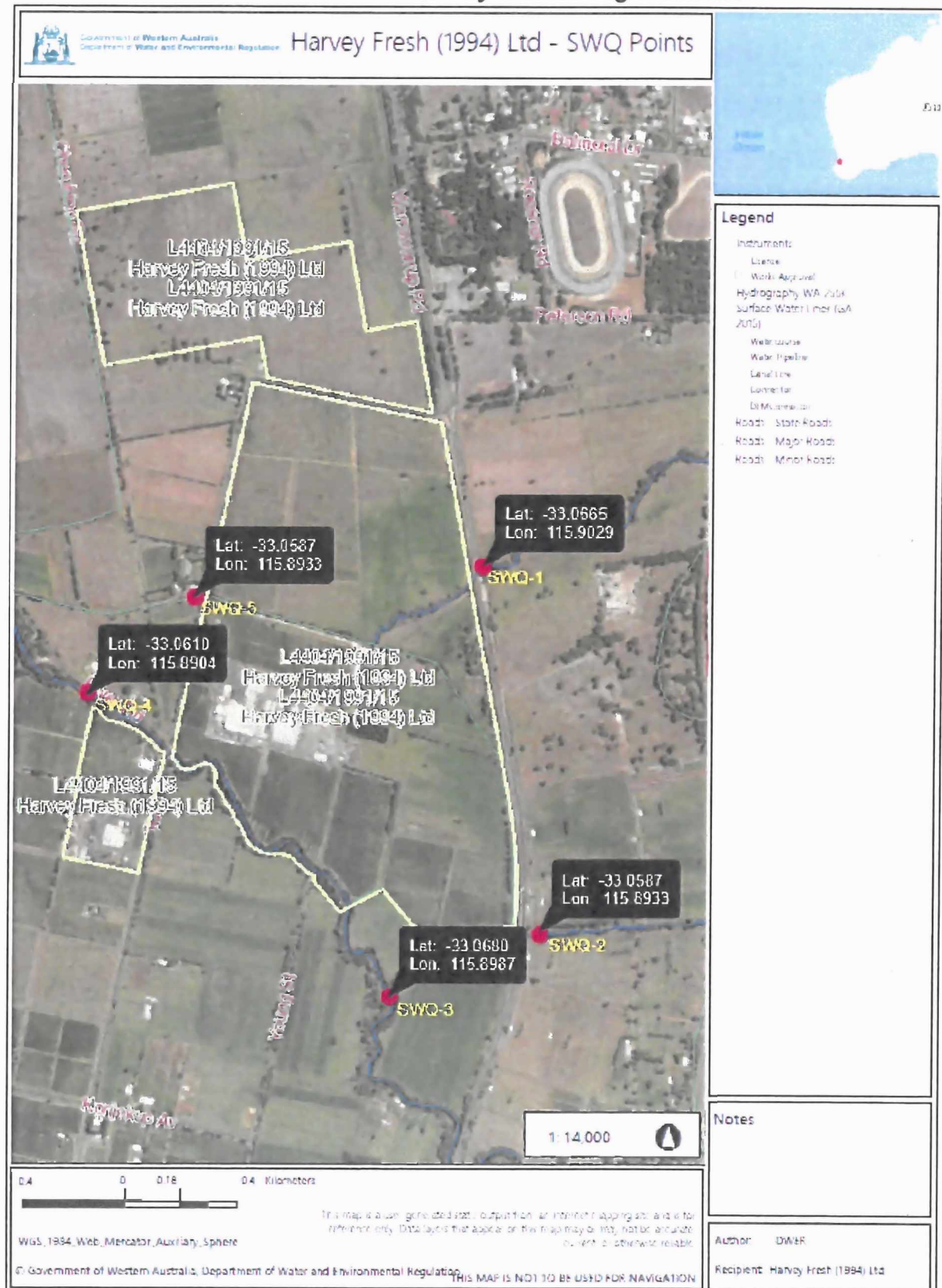
Note that under section 118 of the *Environmental Protection Act 1986* that each person who is a director or who is concerned in the management of the body corporate may be taken to have also committed the same offence.

Appendix 1: Maps

Emission point reference locations



Surface Water Quality monitoring locations



APPENDIX 2

DEFINITIONS

In this Notice, unless the contrary intention appears –

‘Act’ means the *Environmental Protection Act 1986* (WA);

‘Environmental consultant’ means an environmental consultant with qualifications and experience consistent with Schedule B9 of the National Environment Protection (Assessment of Site Contamination) Measure 1999 (the NEPM). The consultant must be a member of professional organisations such as the Australian Society of Soil Science Inc., the Australian Institute of Horticulture, the Australian Institute of Agricultural Science and Technology or other scientific organisations or institutions. Additionally the consultant must have demonstrated experience in the application of an effluent irrigation model such as MEDLI (Model for Effluent Disposal Using Land Irrigation).

‘CEO’ means the Chief Executive Officer, Department of Water and Environmental Regulation;

‘CEO’ for the purposes of correspondence means;

Chief Executive Officer
Department of Water and Environmental Regulation
Locked Bag 10
JOONDALUP DC WA 6919
Telephone: (08) 6364 7000
Fax: (08) 6364 7001
Email: primehouse.reception@dwer.wa.gov.au

‘DWER’ means Department of Water and Environmental Regulation;

‘Fortnightly basis’ means once every two weeks, a period of 14 days beginning on a Monday and ending on a Sunday to a sum of 26 periods per calendar year;

‘Licence’ means the prescribed premises licence L4404/1991/15 under Part V Division 3 of the Act; to Harvey Fresh (1994) Ltd;

‘NATA’ means the National Association of Testing Authorities, Australia;

‘NATA accredited laboratory’ means in relation to the analysis of a sample that the laboratory is NATA accredited for the specified analysis at the time of the analysis;

‘Occupier’ means Harvey Fresh (1994) Ltd, the holder of the prescribed premises licence L4404/1991/15 under Part V Division 3 of the Act;

‘Owner’ means:

- Harvey Fresh (1994) Ltd;
- Guiseppe Sara Morabito;
- L & A Sorgiovanni Pty Ltd;
- Orange Shed Pty Ltd; and
- Parmalat Australia Pty Ltd.

‘Permeability’ means the state or quality of being permeable; ‘Permeable’ means allowing liquids or gasses to pass through it;

‘Premises’ means:

- Lots 187 & 189 on Plan 202110, as shown on Certificate of Title Volume 1619 Folio 278
- Lot 200 on Plan 66494, as shown on Certificate of Title Volume 2744 Folio 600
- Lot 1 on Diagram 4786, as shown on Certificate of Title Volume 1749 Folio 55
- Lot 20 on Plan 2344, as shown on Certificate of Title Volume 2842 Folio 55
- Lot 22 on Plan 2344, as shown on Certificate of Title Volume 2842 Folio 56

‘Provide in writing’ includes by email with an authorised signature.

‘Relevant sampling standards’ means:

- all water samples are collected and preserved in accordance with AS/NZS 5667.1;
- all wastewater sampling is conducted in accordance with AS/NZS 5667.10;
- all surface water sampling is conducted in accordance with AS/NZS 5667.4, AS/NZS 5667.6 or AS/NZS 5667.9 as relevant;
- all soil sampling is conducted in accordance with AS 4482.1 and AS 4482.2 as relevant.

‘7 day period’ means the seven calendar days immediately preceding the day of the month specified in clause 1.6.