

14 December 2015

BY EMAIL scheduled.premises@epa.vic.gov.au

Scheduled Premises Regulations Review
Policy and Regulation Unit
EPA Victoria
200 Victoria Street
CARLTON VIC 3053

Dear Sir/Madam

**Schedule Premises Regulations Review
Submission of behalf of Goulburn Valley Water**

We refer to the invitation issued by the Department of Environment Land, Water and Planning (“**Department**”) and the Environment Protection Authority (“**EPA**”) on 6 November 2015 to make a submission concerning the review of the *Environment Protection (Scheduled Premises and Exemptions) Regulations 2007* (“**2007 Regulations**”).

We request that the Department and the EPA have regard to this submission which outlines important issues for Goulburn Valley Region Water Corporation (“**GVW**”) in relation to the maintenance, upgrade, expansion and operation of infrastructure for the provision of essential services across its region (sewerage and water).

The submission provides a number of examples with the intention of illustrating the practical consequence of existing controls and opportunities to improve regulatory efficiency, facilitate environmental outcomes and reduce the regulatory burden on the water industry.

Reducing the regulatory burden is a consideration that has direct impact on GVW’s ability to minimise the cost of delivering essential services in circumstances where revenue generating charges have been capped or will reduce in the foreseeable future. This limitation imposes significant constraints on capital and operational expenditure by GVW.

We respectfully submit that every possible opportunity to reduce the regulatory burden on the water industry should be implemented where there is no unacceptable risk to human health or the environment. Reducing the regulatory burden is critical to fostering innovation and technology development within the water industry.

In preparing this submission we have reviewed the:

- *Environment Protection (Scheduled Premises and Exemptions) Regulations 1984* (“**1984 Regulations**”);

- *Environment Protection (Scheduled Premises and Exemptions) (Amendment) Regulations 1989* (“**1989 Amending Regulations**”);
- *Environment Protection (Scheduled Premises and Exemptions) Regulations 1996* (“**1996 Regulations**”);
- *Environment Protection (Scheduled Premises and Exemptions) Regulations 1994* (“**1994 Regulations**”);
- 2007 Regulations;
- Publication 1613 titled ‘Scheduled Premises Regulations Review – Discussion Paper’ dated November 2015 (“**Discussion Paper**”);
- final report of the Victorian Competition and Efficiency Commission titled ‘A Sustainable Future for Victoria; Getting Environmental Regulation Right’ dated July 2009 (“**VCEC Report**”);
- Regulatory Impact Statement dated May 1996;
- Regulatory Impact Statement dated April 2002;
- seventh report on subordinate legislation on the Scrutiny of Acts and Regulations Committee concerning the 1994 Regulations dated May 1995 (“**Seventh Report**”); and
- seventeenth report to Parliament on subordinate legislation of the Legal and Constitutional Committee concerning the Environment Protection (Scheduled Premises and Exemptions) (Amendment) Regulations 1989 dated November 1988 (“**Seventeenth Report**”).

Scheduled Premises

- 1 GVW operates under an amalgamated licence number 73864, which covers 26 wastewater management facilities (“**WMFs**”) scheduled under ‘A03-Sewage Treatment’.
- 2 In 2014 GVW entered an enforceable undertaking with the EPA concerning the storage and handling of prescribed industrial waste at a number of these premises without a licence. The prescribed industrial waste consisted of asbestos containing pipe typically generated during the repair of damaged water and sewage infrastructure and also other civil works.
- 3 Repair and maintenance is an ongoing aspect of GVW’s operations and the spoil generated may include asbestos containing material and other solid industrial waste.
- 4 GVW is liaising with the EPA on how to facilitate this proposal.
- 5 GVW is also responsible for 37 water treatment plants across its region. These water treatment plants are also scheduled as ‘K03-Potable Water Treatment Plants’.
- 6 Other Victorian water corporations also operate premises scheduled for:
 - 6.1 A04 - Industrial Waste Water Treatment;
 - 6.2 A06 - Land Disposal;
 - 6.3 A07 - Composting;
 - 6.4 K04 - Water Desalination Plants.

- 7 While not presently contemplated by GVW, there is potential in the future for other scheduled premises to be relevant for GVW and other water corporations in Victoria, including:
- 7.1 A02 - Other Waste Treatment;
 - 7.2 A08 - Waste to Energy;
 - 7.3 L02 - Contaminated Sites-On Site Soil Containment;
 - 7.4 L04 - Contaminated Sites-Long Term Containment.
- 8 In relation to the scheduled premises under the 2007 Regulations, we are not aware of any incident in the region posing a risk to human health or the environment arising out of the design, construction, commissioning and operation of a potable water treatment plant.
- 9 The regulatory intervention through the works approval process provides for the design, construction and commissioning of potable water treatment plants provides no benefit or improvement in the environmental outcome. The regulatory intervention substantially increases the cost and delays the delivering of infrastructure for the provision of an essential service for regional communities.
- 10 For example in 2015 GVW commenced the construction of upgrade works to a potable water treatment plant servicing the township of Numurkah without a works approval. GVW notified the EPA as soon as the oversight was identified. The interaction with the EPA following the notification included conflicting advice concerning the ability to proceed with the works, a necessity for a works approval, the ability to apply for an exemption from works approval and the EPA's sanction focused compliance and enforcement response.
- 11 After substantive delay and increased cost to GVW, the construction of the water treatment plant continued with an exemption from works approval granted by the EPA and the withdrawal of an infringement notice issued to GVW. The regulatory intervention contributed no environmental improvement in the outcome and increased the cost of delivery and delayed the project.
- 12 We recommend that the category of scheduled premises 'K03-Potable Water Treatment Plants' be deleted from the proposed regulations.
- 13 For completeness we note that this category of scheduled premises was originally included in the 1984 Regulations and grouped with other public facilities such as 'a commercial or municipal swimming pool'. Under the 1984 Regulations both a water treatment plant or commercial or municipal swimming pool were exempt from the requirement for licensing where the premises discharged solely to land. Any liquid waste produced from a modern water treatment plant is trade waste and disposed to a WMF or otherwise managed via onsite retention.
- 14 The Regulatory Impact Statement for the 1994 Regulations appended to the Seventh Report states sets out the reason for retaining the scheduling:
- "Water treatment plants producing potable or drinking water, also produce by-product sludges containing aluminium, copper, lead, zinc, and arsenic. Inadequate disposal of this sludge can often lead to discolouration and increased turbidity in receiving waters, promoting subtle biological and chemical changes. In more serious cases, effects can range from chronic to acute toxicity problems in receiving waters. Disposal of the sludge to land results in toxicity to plants and soil organisms. The threshold of 1 megalitre per day will ensure that only

premises which have a potential significant environmental impact will be scheduled.”¹

- 15 It is clear from this statement that the concern relates not to the water treatment plant, but rather the disposal of sludge and effluent. Where a water treatment plant provides for all effluent to be handled as trade waste and sludge to be disposed of to landfill or otherwise managed as an industrial waste or material for reuse then there is no basis to schedule a water treatment plant.
- 16 The risk posed from a water treatment plant, where all effluent is handled as trade waste and sludge is disposed, treated or re-used offsite is no different to any other industry that generates waste, the vast majority of which are not scheduled.

VCEC Report

- 17 In 2008 the Victorian Treasurer directed the Victorian Competition and Efficiency Commission (“**Commission**”) to conduct an inquiry into environmental regulation in Victoria. A purpose of the inquiry included reducing the administrative burden on industry and to develop new approaches to lower regulatory compliance costs. The VCEC Report details the findings and recommendations of the inquiry.
- 18 Chapter 7 of the VCEC Report sets out a detailed review of the licensing and works approvals framework of the 2007 Regulations and the *Environment Protection Act 1970* (“**Act**”).
- 19 The VCEC Report notes the 2007 Regulations introduced risk-based classification which resulted in few sites requiring works approval and licensing. This reduction is consistent with the trend identified in the Discussion Paper and the focus on reducing the regulatory burden and the administrative cost both to the EPA and industry.
- 20 Section 7.5.1 of the VCEC Report considered the triggers for works approval under the Act. The VCEC recommended amendment to the Act to exclude premises upgrades that would result in the same or less environmental harm.² This amendment has not been pursued by Parliament and an opportunity exists to incorporate a general exemption³ which would result in the same practical effect under the proposed regulations.
- 21 The EPA has implemented interim procedures, which are voluntary, have no legal effect and fail to address the Commission’s recommendations. These interim procedures, include the ‘approvals pathway process’. In our experience the process has failed to streamline the statutory approval process and in many instances has in fact delayed the statutory approval and increased the cost.
- 22 We understand there is a case before the Victorian Civil and Administrative Tribunal (“**Tribunal**”) seeking a declaration to address the EPA’s insistence that a works approval is required for a new biofilter at an existing composting facility to treat air emissions from a building handling compost product. Despite the Tribunal’s finding that the proposal will result in the same or a reduction in odour emissions from the premises, we understand that the EPA is maintaining its position that a works approval is required. The facility occupies part of the buffer land of a WMF operated by North East Water.
- 23 The EPA’s approach in this proceeding discourages industry innovation, including in the water industry to pursue initiatives such as biofilters to treat odour emission from waste

¹ Seventh Report, Appendix 2, page A21.

² VCEC Report at page 197.

³ Part 3 of the 2007 Regulations.

management infrastructure. The outcome of the proceeding will be relevant to the water industry and industry more broadly.

24 Section 7.5.2 of the VCEC Report sets out the Commission's recommendation that the Act should be amended to exempt or exclude preapproved technologies from the necessity for a works approval.

25 To our knowledge this recommendation has not been adopted or implemented. There are significant restrictions to any specific exemption granted at the discretion of the EPA under the Act.

26 Firstly, an application of a specific exemption is not subject to a statutory time in which a decision is required. We are aware of examples where the EPA has deferred any decision on an application for an exemption for over 18 months where previous exemptions had been granted for the practice.

27 Secondly, the EPA decision on an application for a specific exemption is not subject to merits review in the Tribunal.

28 Thirdly, no register is available of exemptions granted by the EPA.

29 Finally, the holder of an exemption has no certainty concerning any rollover or further approval of an exemption in the future (typically limited duration).

30 Again there is potential for the proposed regulations to include general exemptions to address these matters without the necessity for a statutory decision by the EPA.

31 For example, a general exemption applicable to potable water treatment plants where all liquid waste produced is handled as trade waste.

32 For completeness we note the Commission made further extensive recommendations concerning reduction in the statutory timeframe in works approval applications and licensing application, standard licence conditions, use of notices to require further information and stop the statutory time period and adopting the risk-based approach to assessing works approval applications and licence applications.

Amalgamated licences

33 GVW holds amalgamated licence 73864, which covers 26 geographically separate premises.

34 There is an opportunity for the proposed regulations to allow the transport of waste, including prescribed industrial waste, generated at a premises to be transported to another premises covered by an amalgamated licence without offending the schedule premises for 'A01-PIW Management'.

35 'A01 – PIW Management' captures sites where prescribed industrial waste not generated at that premises is stored, handled etc.

36 This same difficulty arises in relation to industrial waste not generated at the premises, which is then transported and accepted at a scheduled and licensed premises, but where the licence does not list the industrial waste as a type of waste able to be accepted at that premises.

37 Section 19A and the 2007 Regulations require that a works approval, exemption or notice is required to allow this outcome.

- 38 For example, each of GVW's premises is scheduled for 'A03 – Sewage Treatment' with no 'waste acceptance conditions' or 'waste management conditions'. Any increase in waste accepted stored at the premises requires a works approval, exemption or notice. In practical terms this prevents wastes generated at the WMFs being consolidated at a single or number of WMFs for storage, handling and processing.
- 39 Consolidation of biosolids at a WMF with favourable separation distances is an outcome that reduces the risk to the local community.
- 40 Where the waste is classified as a prescribed industrial waste, the necessity for permitted vehicles and waste transport certificates to accompany each consignment of waste is necessary, regardless that the operation is for all intents an internal process between the premises operated by the license holder.
- 41 Further a practical example is the transport and storage of spoil from pipe repairs in an emergency that contains asbestos. The spoil cannot be accepted at or stored at any of the WMF's without further approval despite the activity being ancillary and a preferred outcome in regard to human health and public safety (i.e. removal of spoil from public location and safe contained storage on a secured GVW site).
- 42 The proposed regulations could address the definition of 'premises' under the Act to allow movement of industrial waste and prescribed industrial waste between premises under the same licence and from civil works sites to a licensed GVW premises without triggering the requirement for permitted vehicles, waste transport certificates, a works approval, exemption or notice from the EPA.
- 43 This issue applies across the water industry.

General exemptions

- 44 Further to our comments above concerning the potential to utilise general exemptions to improve the regulatory efficiency and reduce the burden and cost to industry, we recommend that the general exemption at regulation 10(1)(v) be amended to delete "except for the emission of odorous compounds" in relation to the criteria of 5kg per day of volatile organic compounds emitted to atmosphere.
- 45 As noted earlier this constraint on the general exemption is currently before the Tribunal in relation to the emission to atmosphere from a proposed biofilter. It appears that the general exemption has been eroded through the definition of 'volatile organic compounds' being expanded from that in the 1984 Regulations, which was confined to VOC's emitted from the curing of coatings and resins.
- 46 The 1994 Regulations modified the exemption criteria to exclude the restriction on source from curing of coatings and resins and to carve out the exemption to exclude 'odorous compounds'. The Regulatory Impact Statement for the 1994 Regulations appended to the Seventh Report identifies that the carve out of 'odorous compounds' is intended to capture compounds having an absolute odour threshold of 0.1 parts per million. 'Odorous compounds' is not defined in the 1994 Regulations and this omission has carried through to the 2007 Regulations.
- 47 The proposed regulations should include the definition of 'odorous compounds' as intended by the drafters of the 1994 Regulations.
- 48 The EPA's current interpretation and application of the restriction⁴ is arguably triggered for any scheduled premises, including a WMF where new plant or equipment is installed with

⁴ 2007 Regulations, r 10(1)(a)(v).

an emission to atmosphere such as an exhaust including volatile organic compounds with species that are odorous.

49 This captures any diesel powered pump, plant or motor, biofilters, tree branch shredders etc, which was not the intention of the Parliament when introducing the various regulations over time.

50 As noted above this is having a devastating impact on a proposal to introduce a biofilter to reduce odour emissions discharged to atmosphere, whereby the EPA's intervention has delayed and substantially increased the cost to the proponent, ultimately delaying a plant upgrade which would reduce the environmental impact on surrounding residents.

51 This approach and discretion retained by the EPA is of concern and allows alternative interpretations and approaches to be adopted by different EPA officers over time.

52 GVW and the water industry seeks certainty of outcome and a reduction in the regulatory burden imposed on what are wholly owned State Government enterprise delivering essential services.

53 The State Government's focus on reducing the cost of delivering essential services supports the reduction in the regulatory burden imposed on industry under the Act and the 2007 Regulations.

54 Further, we submit that the specifications acceptable to the Authority for effluent reuse schemes (Regulation 11) and bio solids reuse schemes (Regulation 12) be simplified and remove the implication that the EPA approval or authorisation is required.

55 Further, we recommend that regulation 11 be amended to include a discharge of treated effluent from a WMF where the discharge is necessary to avoid an over topping of lagoons and storages provided again where specifications to the satisfaction to the EPA are published and identified.

56 This removes the previous reliance by the water industry on approvals pursuant to section 30A of the Act for emergency discharges.

57 Last year EPA amended all water corporation licences to insert condition LI_DW2.8, which states:

“Discharge of treated wastewater during wet weather conditions must be in accordance with specifications in “Discharge to Water” section of EPA Publication 1322 ‘Licence Management Guideline.’

58 Condition LI_DW2.8 does not cover the breadth of scenarios that arise, placing water corporations in a vulnerable position of breaching a licence condition by preventing over topping of lagoons and storage infrastructure.

59 We submit that the proposed regulations include a general exemption for the discharge of treated effluent where a specification published by the EPA has been satisfied (e.g. as for biosolids reuse).

Licensed operator risk assessment

60 The Discussion Paper raises the proposition of integrating the Licensed Operator Risk Assessment (“LORA”) into the regulatory process for works approvals and licences. In particular, it is understood that LORA outcomes may impact on licence holder fee requirements.

- 61 The Department's and EPA's initiative to streamline and reduce the regulatory burden both on the licence holder and also the regulator is encouraged and welcome.
- 62 The LORA decision must be disclosed to the licence holder like any other statutory decision and a right to seek merits review in the Tribunal created to allow any assessment and decision made by the EPA concerning the tier in which a premises or licence holder is assigned may be reviewed by an independent fact finder.
- 63 It is important that the public reporting and transparency of decisions and information imposed on the water industry is equally applied to the EPA and its regulation of the water industry.
- 64 Ultimately this informs the community and holds the water industry and the EPA to account for their performance and decision making.

Licence Fee – Regulatory Effort

- 65 The Discussion Paper identifies amendment to the licence fee structure where the licence fee is variable based on the risk posed by the facility to the local community and the environment.
- 66 In principle, this approach should be supported and expanded to works approvals. The current fee for works approvals increases with the value of the works, regardless of the risk posed to the local community or the environment and the regulatory effort and resources required by the EPA to assess the proposal.
- 67 Viewed objectively, all fees payable for a licence or works approval application, should not be payable by a Government enterprise such as a water corporation or local government. This simply sees the transfer of funds generated by rates or charges transferred from one government entity to another.
- 68 We recommend the *Environment Protection (Fees) Regulations 2007* be amended to abolish the imposition of any levy on water corporations.

Separation Distances

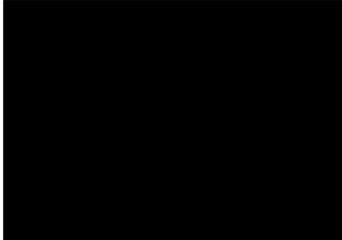
- 69 Encroachment of WMFs separation distances with incompatible land use and development is a critical issue for GVW and the water industry.
- 70 EPA's more recent participation in proceedings before Planning Panels Victoria ("PPV") and the Victorian Civil and Administrative Tribunal ("VCAT") in support of the water industry is welcome and indeed necessary in the future.
- 71 We are seeing an adoption of the concept of an 'agent of change' as detailed in EPA Publication 1518 titled 'Recommended Separation Distances for Industrial Residual Air Emissions' in decisions handed down by VCAT and PPV.
- 72 In the first instance it is not clear how this may be incorporated into the proposed regulations or if indeed it is even necessary.
- 73 However the principle certainly underpins the basis from scheduling WMFs (risk of odour emissions impacting the community) and the necessity to protect these public utilities from encroachment.
- 74 This concept is directly relevant to LORA. A premises adopting industry best practice may remain a high risk premises and consequently an elevated tier because of the encroachment its surrounding separation distance.

75 In many instances water corporations have limited ability to contest or prevent encroachment by incompatible land use and development.

If you have any queries please contact me. We welcome the opportunity to discuss the submission.

Yours faithfully

RUSSELL KENNEDY



Stefan Fiedler
Principal