



**Australian Contaminated Land Consultants Association
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Statutory Policy Review Team
EPA Victoria
GPO Box 4395
Melbourne VIC 3001

**Submission in relation to:
Statutory Policy Review – Comment**

Thank you for the opportunity to provide comment on the proposed statutory policy framework reforms currently being considered by Environment Protection Authority (EPA) and the Department of Sustainability and Environment (DSE). EPA and DSE are commended for seeking comments on reforming our Victorian Statutory framework that has been in place for over 35 years.

The Australian Contaminated Land Consultants Association (Victoria) (ACLCA) is a not for profit association of 34 member companies that have substantive businesses in contaminated land consulting in Victoria. Our membership includes all of the large and most of the small and medium size professional contaminated land consultancies in Victoria. Member companies are subject to stringent technical, quality and ethical expectations, and ACLCA encourages them to develop and maintain appropriate industry practices.

The Statutory Policy Review Discussion Paper (Publication 1370) issued in June 2011 by DSE and EPA contained sixteen (16) questions with regards to the current framework and the proposed framework changes. ACLCA has concentrated their attention on four (4) of the sixteen (16) questions posed within the document.

ACLCA members have attended EPA' workshops as well as have work shopped these questions in an open forum on Monday 8 August 2011. This letter represents a consolidation of discussions and views presented by representatives of ACLCA member companies. The responses to the four (4) questions are as follows;

Question 1: *In your experience, what has worked well with statutory policy? What has not worked well?*

The sustainability principles are applied effectively within the current policy framework. Healthy ecosystems and environments provide vital goods and services to humans and other organisms. These sustainability principals has been reflected in



the numerous Statutory Environment Protection Policies (SEPP) that aim to protect our environment.

The current framework has shown characteristics of stability. The framework is less reactive to modify and amend its content to resolve specific issues manifested overtime. The framework is generally risk driven rather than specific number driven. The framework allows the review of an environmental threat with respect to risk it poses to human health and the environment. This provides a pragmatic solution to be derived to contain, manage and resolve the threat over time.

ACLCA members are appreciative of the scientific underpinnings of the current framework, and of the efforts to be consistent with the National Environment Protection (Assessment of Site Contamination) Measure 1999 (NEPM).

This comprehensiveness, consistency and stability have provided practitioners with the opportunity to develop the expertise to understand and apply the Policies over time.

The framework has shown a level of inconsistency in its wording between policies, regulations and guidelines. The inconsistencies vary between the wording used to define objectives and the application of the policies. The information provided in some of the SEPPs is sometimes too specific in particular when referring to guidelines and criteria and these become out of date prior to the next full review of these policies. This has been seen in the Groundwater of Victoria SEPP.

The regulatory review and amendment process timeframe have not facilitated the incremental evolution of SEPPs with changing community expectations and scientific progress. ACLCA considers it would be beneficial if the future framework better accommodated item or topic specific updating or amending – as is the case with Regulations.

The EPA decision making process is not sometimes considered to be cleared where different segments of the environment are affected - SEPPs sometimes prioritise conflicting environment priorities. In these cases it is not uncommon for outcomes to reflect administrative expediency rather than environmental common sense.

We understand that the Statutory Framework revision will bring a level of consistency across the policies and regulation applied across different industries. One of the proposed changes is to provide a level of clarity on the regulatory authorities' roles and responsibilities'. Whatever changes are made to the Statutory Framework , EPA and other regulatory agencies that have a role in their implementation and enforcement, will need to have the technical capacity to provide technical advice, guidance and support to users of the Statutory Framework".

The terminology between guidelines, regulations and policies requires to be addressed as it is sometimes inconsistent and interpretation that leads to inconsistent outcomes.

Question 10: *In your experience, what features of statutory policy in other states or overseas work well?*



There has been a certain level of inconsistency in the decisions made by EPA with reference to similar projects over time. These decisions are not always easy to review and understand. An example that is relevant to ACLCA, is that the reasoning of specific EPA advice or a decision made about an environmental audit, will not be included in the audit findings; such as in the 53X Statement of Audit or 53V Audit Reports. The difference in decisions is not clear and they may be due to the varied interpretation of the applicable SEPP(s) or the inconsistency of wording. The US EPA publishes its record of decisions and clearly states the process taken to arrive at the decision. This type of publication may assist the industry including EPA appointed Auditors (Contaminated Land and Industrial) to achieve effective solutions that comply with the statutory process. Publishing EPA decisions may also assist EPA with a level of transparency; consistent with recent reviews of EPA Compliance and Enforcement Action.

ACLCA is conscious that this may impose additional administrative requirements on EPA and could require it to adopt a higher level of accountability than their sister agencies. Therefore it is suggested that any such expansion of information dissemination should be limited in extent and targeted to areas of greatest concern (for example, CUTEP, asbestos management, enforcement actions, 'public' advice to other agencies).

Our Victorian Statutory Framework is one of many across Australia that is risk-driven which provides for the opportunity to introduce and apply pragmatic environmental solutions. Other Australian States are driven by threshold numbers where remediation and environmental solution may be limited by these values which may not be suitable for the impacted environment.

Other Australian States such as Western Australia provide a simple and easy to understand Statutory Framework. An easy and simple Statutory Framework may improve consistency in the day to day decisions made by EPA.

Question 11: *Which of the model(s), if any, do you think may work well? Why?*

The four models presented in Section 6 of the discussion paper were all found to contain a level of merit. Model 2 outlines a number of fundamental changes that incorporate flexibility, simplicity and innovation. The current Statutory Framework faced a number of challenges such as the reduction of the landfill space for disposal of contaminated soils, an industry driven by innovation in order to reduce overall construction cost and time and the introduction of new groundwater and soil remediation technologies.

Model 2 allows for the introduction of Regional and Local relevance which is something that the current framework lacks. The beneficial uses listed in SEPPs are not always applicable due to the local and/or regional setting of the impacted environment therefore their protection for future generation may not be applicable now or into the future. A perfect example is the relevance of 'Stock Watering' as a groundwater beneficial uses that requires protection in the Melbourne CBD.

Question 16: *Do you have any other suggestions for reforms to the statutory policy framework?*



In the areas that ACLCA member companies operate, the vast majority of work that is undertaken is funded by industry – either to restore beneficial uses of the environment or to determine if beneficial uses are being protected. It is therefore considered important that any changes to the Victorian Statutory Policy framework be made in consideration of the parties that may be subject to cost implications.

For example, a current concern can arise during the remediation of contaminated soil or groundwater, where policy requires beneficial uses to be restored. At the tail end of projects the cost, resources and environmental side-effects of continued remediation can become out of proportion to the residual risk remaining and the quantity of contaminant actually being remediated.

This places resource, time and cost imposts on the funding organisation where a broader view would encourage those limited resources to be redirected to areas of higher environmental priority.

ACLCA is therefore supportive of a framework that is conducive to accommodating environmental tradeoffs in order to achieve best overall environmental outcomes.

ACLCA also notes that even with our membership there is a diversity of roles. The most significant of these is that between EPA appointed environmental auditors acting in statutory roles and other contaminated land professionals. As these parties have different roles and responsibilities, any future framework needs to be cognizant of these differences. Efficient and robust management of contaminated land in Victoria will be best achieved within a framework that facilitates these parties and the regulators being able to arrive at environment decisions that represent best balanced environmental outcomes. In order to achieve this, the following five points are seen as priorities:

1. Professional expertise on a case by case basis is critical to achieving best environmental outcomes. The complexity and diversity of environmental systems, in conjunction with the vast array of potential environmental contaminants means that every soil or groundwater management exercise is unique. No rigid regulatory framework can foresee and specify the best outcome in each case. Therefore it is critical that decision making systems allow (where appropriate) for the case by case application of expert knowledge and judgment.
2. The framework to support this expertise should reflect scientific principles and be supported by guidance on ultimate environmental objectives to be achieved and methodologies to be employed,
3. It is preferable that any future framework include mechanisms for review and revision on an as-needs basis as specific areas of concern arise, rather than on a whole-of-policy basis at some nominated frequency.
4. There should be some (limited) expansion in the publication of regulator decisions and the basis for those decisions, in order to improve transparency and accountability.



5. National consistency and uniformity should be worked towards wherever possible. It is thought preferable to move towards standardization of terminology, rather than continue to retain Victorian specific expressions.

ACLCA appreciates this opportunity to assist in the successful development of an improved statutory policy framework for the State of Victoria. We would be pleased to provide further input as required and appropriate, and can be contacted via our Executive Officer, Louisa Nicholls on (03) 9509 5949 or info@aclca.org.au.

Yours faithfully,

GLENN THIELE

PRESIDENT

Australian Contaminated Land Consultants Association (Victoria) Inc.