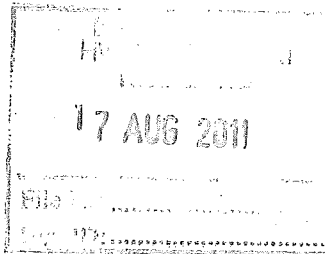


15 August 2011



Mr Garrett Hall

Statutory Policy Review
EPA Victoria
GPO Box 4395
Melbourne VIC 3001

STATUTORY POLICY REVIEW

Dear sir / madam

Thank you for the opportunity to comment on the Statutory Policy Review Discussion Paper (the Discussion Paper) released in June 2011. I believe the hierarchy of statutory controls in the environment protection space is sound, however improvements could be made to aid clarity and delivery of policy objectives. Some ideas may include:

- The SEPPs and WMPs should continue to clearly articulate the beneficial uses to be protected for relevant environmental segments, or the required waste management outcomes. These instruments should include scientifically sound environmental quality or management objectives where appropriate. The SEPPs and WMPs should detail what the State's desired outcomes are for that environmental segment, or waste management practice, but not detail or prescribe a method of attaining these outcomes. EPA is not well placed to recommend the best path to achieving the best outcome, and setting benchmark attainment measures has the potential to stifle innovation, while also not being cognisant of environmental heterogeneity, or spatially variable waste management needs across the state.
- The SEPPs and WMPs should encourage, support and reward (incentivise) beyond compliance activities and those industries that strive to innovate in their environment protection & sustainability endeavours.
- BPEM type documents should form a means of describing, not prescribing the attainment measure. They should not prescribe an outcome or process, but rather allow for demonstration of equivalent environmental outcomes.
- While useful, BPEM type documents are often large and amendment and updating prove arduous. As a result these documents can become outdated quite quickly given the more rapid advances in technology and society. By being outdated it can be argued that they do not necessarily represent 'best practice' and instead articulate a base-level of performance, rather than encouraging innovation and a 'beyond compliance' mentality. As an alternative Planning Practice Notes, stemming from the E&P Act, are an alternative approach targeted in their specific audience, issue and desired outcome, and can be quickly (by comparison) established or updated, allowing a more contemporaneous document. If, for example, the Landfill BPEM was split into its individual parts, with each individual part (siting, design, construction, operation, monitoring & post-closure management) presented in its own Practice Note, each Practice Note could then be more readily updated as technology or understanding changes. Similar Practice Notes could be developed for other industry

sectors, or specific practices impacting on specific environmental segments, e.g. outfall monitoring in the freshwater environment.

In practice the establishment of new industrial or waste facilities needs to address requirements of the both the Environment Protection Act, and the Environment and Planning Act (amongst others), and I feel that consistency between the legal constructs, objectives and decision making processes associated with these two pieces of legislation could be improved. Planning Practice Notes have been applied to good effect in the planning space, and may serve a similarly useful purpose in the environment protection space.

It is fair to say that there has been a lack of clarity, consistency and transparency in EPA's decision making processes in recent time. While the process of standardising Licenses and Works Approval processes is to be applauded, it does lend itself to 'check-box' style regulation, which in effect discounts the heterogeneity and spatial variability in the environment, or waste management needs across the state. This may be an artefact of the current statutory framework, and overcoming 'check-box' regulation should be considered as part of this review process.

Check-box regulation limits the ability to consider risk in the context of the net environmental outcome, or the broader sustainability benefits of a proposal. For example, a company may be able engineer its process to eliminate 90% of its emissions to the environment, with the residual emission posing a low-to-moderate risk to the environment. If EPA were to require 100% elimination of the emission it would result in a four-fold increase in energy and water use, and the question needs to be asked whether this is sustainable given the residual risk? EPA's decision making process needs to consistently and transparently consider sustainability as a fundamental to the process, rather than relying on a regimented 'check-box' formula. In the example provided above it may be possible to manage the residual risk with a more comprehensive monitoring program, however the Works Approval process as currently applied does not provide this outcome.

A consistent methodology to the assessment of risk needs to be provided at some point within the statutory framework. As so many decisions by EPA and industry are contingent on the understanding and management of risk, it is necessary that a consistent approach is applied to aid transparency and increase stakeholder confidence. Where potentially conflicting risks are identified it is important to also understand EPA's priorities in order to effectively manage the potential trade off in managing one risk in preference to another. I cite the example provided in the previous paragraph – does a zero emission outcome trump higher water and energy consumption? The management of these risks, and the priorities EPA will apply in making its decisions, should be detailed in policy in order for risks to be consistently and sustainably managed across an industry sector, or within an environmental segment.

It is also considered important that the environment protection statutory framework supports achievement of desired non-statutory policy outcomes. For example, SEPPs, WMPs and 'best practice' requirements should not stifle the innovation required to achieve non-statutory objectives, such as those outlined in *Towards Zero Waste*.

To close I would just like to say that EPA's strong compliance and enforcement program, while certainly beneficial to the environment, is disengaging EPA from Industry and limiting its ability to gain frank and useful intelligence from the sector it is seeking to regulate. Through this statutory policy review process I feel EPA should be cognisant of its potential inability to obtain valuable insights from Industry.

I again thank you for the opportunity to provide my thoughts in relation to the review, and I look forward to seeing the outcomes.

Yours sincerely,

Garrett Hall

