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Statutory Policy Review
EPA Victoria
GPO Box 4395
Melbourne Victoria 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.

Golder Associates supports the review to explore how statutory policy can be enhanced to provide a more effective framework for protecting the environment in Victoria.

We provide the following comments in response to the Discussion Paper.

Strengths of the Current Framework

The legal status of the State Environment Protection Policies (SEPP) and Waste Management Policies (WMP) assist in providing certainty to stakeholders on their obligations and consistency in their application. Golder Associates therefore supports retaining the legal status of SEPP and WMP in the future. Similarly we believe that the established hierarchy of statutory controls for environment protection is sound.

The establishment of beneficial uses and waste management outcomes consistent with the Victorian communities' expectations is another positive aspect of the SEPP and WMP. Establishment of beneficial uses provides a sound basis for the establishment of relevant objectives and indicators and assists in evaluation of impacts and decision making on complex issues or where some uncertainty exists about specific criteria. Evidence based approaches supported by sound science should continue to be used to establish environmental objectives and waste management outcomes.

Numerical objectives and indicators established within a legal framework consistent with the established beneficial uses also assist in providing clarity and consistency of expectations.

These elements of the statutory framework assist in decision making associated with the evaluation of environmental impacts, waste management decision making and evaluation of risk mitigation measures.

Weaknesses of the Current Framework

As identified in the Discussion Paper, SEPPs and WMPs may also establish management standards in addition to beneficial uses and objectives. It is our experience that the establishment of prescribed management approaches in a legal instrument such as a SEPP or WMP, whilst providing clarity, can be inflexible, and at times limit innovation. Golder Associates suggests that greater value is achieved through instruments in the statutory framework providing clarity on outcomes rather than on measures required to be implemented to achieve those objectives. This is particularly relevant in the light of the challenges and changes to the Victorian environment where new and innovative approaches may evolve rapidly.



It appears that it is often a difficult or cumbersome process to amend a SEPP or WMP. Whilst supporting retention of the legal status of objectives and indicators Golder Associates believes that it would enhance the operation of the framework if criteria could be more readily varied. This is relevant where new evidence emerges on the potential impacts of a pollutant that necessitates revision of existing (or establishment of new) standards.

Subordinate guidance documents such as Best Practice Environmental Management guidelines (BPEM) or Protocols for Environmental Management (PEM) should form a means of suggesting rather than prescribing the attainment measure. They should not prescribe an outcome or process, but allow for demonstration of equivalent environmental outcomes.

In some cases the updating BPEM or PEM documents can also be a cumbersome process. These documents can become outdated quite quickly given the rapid advances in technology. This can result in application of a base-level of performance, rather than encouraging innovation.

General objectives such as the requirement to use "Best Practice" or "Maximum Extent Achievable" are often open to broad interpretation resulting in inconsistent approaches and a lack of certainty for industry. We suggest that such objectives would benefit from more guidance on interpretation such as a clear methodology that would enable transparent evaluation of proposals.

Whilst the existing approach that enables the use of risk assessment to evaluate if beneficial uses are being protected is supported, the current arrangements lack a consistent framework for undertaking such risk assessments. We suggest that an approach to evaluation of risk should be put in place that would provide a transparent means of ensuring risk assessments are done in a consistent fashion.

Needs for Future Framework

Golder Associates agrees that the impacts of climate change will present significant challenges in the maintenance and protection of environmental values in Victoria. Dealing with the impacts of climate change and implementing means to reduce carbon emissions will place fundamental pressure in the statutory framework to better integrate all aspects of environment protection into decision making. There is already a demonstrated need to be able to better integrate decision making on environment protection in the areas of waste management, site remediation and the impact of goods and services throughout their life cycle. The current statutory framework is not adequately integrated to enable sound decisions on what constitutes "net environmental benefit" to be made. We suggest that the statutory policy framework could be enhanced through greater consistency between instruments and the development of an approach or methodology that guided integrated decision making on net environmental benefit or best environmental outcome.

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. 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.

The establishment of new industrial facilities needs to address requirements of the both the Environment Protection Act and the Planning and Environment Act. At times it is not clear how to meet the objectives of both pieces of legislation. Additional guidance on how industry and decision makers can understand how the objectives of the Environment Protection Act (including subordinate instruments such as SEPP and WMP) and the Planning and Environment Act can be effectively integrated. Guidance documentation similar to Planning Practice Notes may well assist in this integration.

Preferred Model

Golder Associates supports the retention of a statutory policy that includes SEPP and WMP. Future SEPP and WMP should;

- Have a focus on establishing beneficial uses (or environmental values), defining environmental quality objectives and indicators.
- Provide better integration of objectives that enables consideration of “best environmental outcome”.
- Provide additional guidance on means of achieving outcomes, including general objectives relating to “Best Practice” that provides clarity and supports innovative approaches whilst avoiding prescriptive requirements.
- Establish a dynamic framework that is more rapidly able to respond to emerging issues, technologies and community expectations.
- Provide clarity on consistent methodology for risk assessment.

Golder Associates would welcome the opportunity to further participate in the review process as it proceeds. If you have any queries on this submission please contact Bruce Dawson on 8862 3774.

GOLDER ASSOCIATES PTY LTD

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