

Ms J Breider,

19th August, 2011

Statutory Policy Review Team,
EPA Victoria,
GPO Box 4395,
MELBOURNE 3001

Dear Team,

Re: Policy Review

The Department of Sustainability and Environment (DSE) and Environment Protection Authority (EPA) are reviewing the framework for statutory policies made under the Environment Protection Act 1970 (EP Act) and released the discussion paper 'Statutory Policy Review'.

Input is being sought on the overall policy framework which includes the function, structure and effectiveness of policies, but not the content of individual policies. Input on a model for reforming the policy framework is also being sought. The following comments are therefore provided.

It is noted here that the comments made, for the most part, are simple. Time constraints (own) have not allowed for more comprehensive comments.

1. General Comments

Environmental policies have the potential to be efficient and effective tools for the protection of people's health and well being and the environment. They provide opportunities such as -

- clarifying and expanding upon requirements under the EP Act
- clarifying roles and responsibilities
- setting standards that must be met
- providing direction
- ensuring consistency in decision making

However, in order to be efficient and effective, environmental policies must be -

- written in a manner that is clear and precise and not subject to interpretation
- consistent in structure and language for ease of understanding
- concise; do not include anything that is not really required
- actionable; that whatever is required is possible today or in the near future
- remain relevant through regular and easily managed reviews (say every 2 to 3 years)
(The SA policy is considered a good example in that the policy itself specifies how it can be amended. The SA policy is also considered a good example in other areas such as including penalties for non compliance)
- enforceable and;
- must not come into conflict with each other, the EP Act and other relevant legislation or policies

To ensure the efficiency and effectiveness of existing environmental policies, there will be a need to consider whether -

- they are all still relevant today
- some could be amalgamated
- they are all clear, precise, concise and consistent
- any are in conflict with the other environmental policies, the EP Act or other relevant legislation and policies
- they are enforceable, actionable and their reviews are easily managed
- there are areas for which policies need to be developed

2. Specific Comments

A number of areas are covered by the EP Act. These have been identified as being -

- Air (Part V1 of EP Act)
- Water (Part V of EP Act)
- Land (S45 of EP Act)
- Waste (includes litter, liquid waste, solid waste, solid industrial waste, industrial waste, and prescribed industrial waste, and covered by various sections of the EP Act)
- Noise (Part VIII of EP Act)

The EP Act also covers

- Notifiable Chemicals (S30C of EP Act)
- Septic Tanks (Part IXB of EP Act)

Policies exist for air, water, land, noise and some wastes.

There is a need to consider if the EP Act itself or any regulations and existing policies sufficiently cover requirements to protect human health and well being and the environment in relation to the above areas found in the EP Act.

Also, the EP Act refers to solid industrial waste, industrial waste and prescribed industrial waste with a definition for industrial waste only. There is a need to clarify which industrial wastes relate to which term. This could possibly be addressed through the chosen model for a revised statutory policy framework.

2.1 Matter Of Interest

Of interest is that, with regard to a permit application for a septic tank, the EP Act states what a municipal council must do (S53M(4) onwards). This shows, then, that the EPA has the power to impose requirements on other authorities, through the EP Act for certain, but possibly also through policies and regulations. This is something that may need to be considered for inclusion in the model for reviewing and developing environmental policies or regulations.

If there are requirements that other authorities must comply with included in policies, then there needs to be a mechanism for ensuring that these authorities are made aware of these requirements.

3. Some Problems identified

Some of the problems identified with regard to environmental policies are -

- a) The Industrial Waste Management Policy (Prescribed Industrial Waste) was revoked and replaced by the Environment Protection (Industrial Waste Resource) Regulations 2009 and some 30 Industrial Waste Resource Guidelines.

There is a need to carefully consider revoking a policy. It would be better to amend a policy than to have it replaced by a regulation and numerous guidelines.

- b) Buffer distances have been a major issue for the community for many years. Industries are also affected by buffer distances when sensitive uses encroach. The (outdated) buffer distances to sensitive uses for industries that exist in EPA publication AQ2/86 (which are also reflected, though more up to date, in provision 52.10 of planning schemes) do not apply to sensitive uses. For example, an industry may not be able to establish within 300 metres of a residential area, yet there is no requirement that a residential area must not be developed within 300 metres of that industry.

There is a need for clear and effective buffer distances that satisfy the community with regards to feeling safe, and it is wondered if such should be done through policy.

As noted above, under 2.1 'Matters of Interest' the EP Act places requirements on municipal Councils where they must comply with the act. It was suggested that maybe such requirements could possibly also be put into policy and, maybe through a policy, appropriate buffer distances that apply equally to industry and sensitive uses could be implemented. This may also be a matter which may need to be considered for inclusion in the model for reviewing and developing environmental policies or regulations.

- c) Industries, in their applications for works approvals, do not necessarily show that their technology will comply with, say, air quality standards with the same measurements as in the air policy. For example, in an application the technology may be measured as emitting gm/s to air whereas in the policy it is noted as 50mg per cubic metre.

Generally, members of a community will not be able to ascertain whether the measurement given by an industry meets or is less than the standard set in a policy. There is therefore a need to ensure that industries show compliance with a policy in accord with measurements as required in that policy or, policy is changed if the standard measure for technology is different to what is in existing policy.

- d) SEPP have been amended from time to time, but amendments are not included into a new version of the SEPP. It would be more effective to have a system similar to legislation where, after proposed amendments to legislation have been passed by Parliament, there is an updated version of the legislation available which includes the amendments.
- e) The environmental standards set within SEPP's need to be updated and improved to better protect people's health and well being and the environment. This is especially with regard to air quality when, in the National Environment Protection Council's discussion paper, it has been found that it is increasingly accepted that many pollutants have no thresholds at which impacts on health have not been observed.¹

4. Which Model?

In general, there are a number of problems with existing environmental policies such as not being clear and easily understood, not being concise, and there are questions around whether they are enforceable, even if only in parts. In many cases, existing policies are some 10 years old and need considerable updating. There may also need to be additional policies, or existing policies structured to include other areas within the EPA Act which could benefit the environment and people's health if in a policy.

There is also the need to consider changes that have occurred recently such as the EPA's compliance and enforcement policy and changes that are occurring such as the planning review and the EPA's Environmental Justice policy which is being developed and should guide any other environmental policies or amendments to environmental policies, regulations and possibly the EP Act.

Taking these matters into account, it is believed that the model for a revised statutory policy framework would need to be one that can manage significant changes. Therefore model 2 is considered to be the appropriate model for reform.

Kind Regards,

Jani Breider

¹ Review of the National Environment Protection (Ambient Air Quality) Measure, Discussion Paper-Air Quality Standards, July 2010