

Please provide your name and address and details of your organisation (if relevant)

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Questions from the discussion paper

CHAPTER 2: HOW STATUTORY POLICY WORKS

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

The current statutory framework has facilitated a general improvement in the environment, in spite of the increasing population in Victoria and particularly in metropolitan Melbourne.

They have provided definitions of Segments, Beneficial Uses and many of the key issues that need to be considered in relation to the factors that impact on ecosystems and human health. We would strongly recommend that the Policy framework in that regard that now exists be at least preserved as that would retain the years of knowledge and experience that has gone into the current range of SEPPs.

The general form of the environmental policies provides a logical flow with regard to evaluating the condition of the environment. However, amending a SEPP is cumbersome, which can result in overly conservative environmental indicators as they are expected to last for 10 years.

For example, in urbanising areas around Melbourne the surface water features have been modified to the extent that the quality objectives used in the SEPP Waters of Victoria do not reflect the degradation, which means that overly conservative objectives (often unattainable) would be applied without the flexibility to update requirements based on changing knowledge regarding environmental impacts from ranges of chemicals.

With regard to Industrial Waste Policies, one issue has been the inconsistent application of guidelines. For example, landfill designs approved by EPA have not been consistent across metro Melbourne, let alone across the State.

One recent challenge has been the numerous revisions of third-order guidance documents published by EPA. For example, the Landfill Licensing Guidelines has been revised twice in the last six months. While it is commendable to be continually improving guidance documents, continually moving the goal posts on very short time frames does not provide certainty to business or the community and is disruptive when undertaking long term site management.

Question 2: How well do you think the features and obligations in statutory policy are understood? Are some parts better understood than others? (We would welcome some examples).

Within an individual SEPP the areas, beneficial uses, objectives and indicators are typically laid out clearly and therefore are relatively easily understood. However, reconciling objectives between the SEPPs can be a challenge and less easy to follow requiring frequent reference to the notes sections to understand the implications of the actual policy clauses.

For example, application of the Groundwater and WOV SEPPs in areas of groundwater/surface water interaction has been challenging with regard to setting environmental quality objectives (which are typically concentration based) when flux-based objectives may be more appropriate.

Question 3: Are there critical issues, risks or relevant processes (e.g. upcoming reviews, strategic planning processes) that should be considered in prioritising individual policy reviews?

Coordinating with the review of the Environment and Planning Act. Consideration of Ministerial Direction No1 and the Planning Guidance Note – to ensure that the level of action by Responsible Authorities is adequately understood and is being implemented by the right bodies.

In that regard, the implementation of the output from the statutory processes, such as Audit Statement Conditions, is not covered by Statutory Policy or any adequate means to ensure that conditions are followed by future owners/occupiers of premises that are the subject of the statements or audits, or that any such conditions are implemented appropriately during a construction/development process. This is a priority and should be considered as part of the Land SEPP review process.

Examples would be ensuring the appropriate installation and ongoing management of vapour risk with vapour barriers, extractive gas collection layers etc, and/or the implementation of long term groundwater monitoring programs. These could be covered by a separate instrument such as addition to certificates of title.

CHAPTER 4: CRITICAL CHALLENGES FOR STATUTORY POLICY

Question 4: What do you think are the main challenges for statutory policy? Are there other challenges not presented in the discussion paper?

The main challenge that we see is to both provide the incontrovertible framework for application by EPA and professionals in the environmental field whilst remaining accessible and understandable to the wider community. A frequent point raised at the workshops was that the community wants certainty for those that do not have the resources to employ sophisticated modelling and risk

assessment techniques (ie give me a fixed criterion). However, for the bigger issues that are covered by the SEPPs, a recognition of the use of risk techniques is essential as alternatively, compliance would be driven at great expense to the lowest common denominator.

Another challenge is that there is very little clarity or guidance on the time frames over which policy would have to be implemented. For example; in groundwater, the user of the policy document has to consider the movement and travel time of contaminant plumes with regard to potential receptors, but there is no guidance on how to treat long time frames which could be over many years (decades) but still should be of concern.

Question 5: In your work, which instruments or documents under the Environment Protection Act do you (or your organisation) use most often? The Environment Protection Act, Regulations, statutory policies or guidance?

As an environmental auditor or in environmental management, we refer frequently to the Land, Water, Groundwater, Air, Noise, SEPPS and their attendant schedules; also to the many and various guidelines published by EPA, ANZECC, NHMRC, NEPM etc. We would also reference the various regulations and guidance such as in regard to Landfills, waste management, USTs, etc.

For example that Landfill BPEM as a third-order guidance document to assist with design and operation of solid waste facilities would be regularly referenced. We also regularly reference the Industrial Waste Resource Guidelines.

CHAPTER 5: APPROACHES TO STANDARD SETTING

Question 6: What types of measures or provisions in the 'attainment programs' of statutory policy do you find most useful?

Do you think these need to stay in statutory policy or may be better placed in other regulatory instruments or guidance?

No comment

Question 7: How well do you think statutory policies perform their standard-setting role?

Would specific types of standards be better placed in other regulatory instruments or guidance?

We believe that the current balance between SEPPs and Aus Standards is about right.

Question 8: Has including the roles and responsibilities of agencies — which often sets out how agencies will jointly tackle particular issues — in statutory policy been valuable?

Why/why not?

Not really, because it is often not clear which agencies retain responsibility for implementation or enforcement of policy. Eg waste policy split between EPA and DSE.

Question 9: In your experience, are there features in other fields of regulation that would be useful in the Victorian environment protection framework?

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

CHAPTER 6: POTENTIAL MODELS FOR REFORM

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

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Question 12: Are there other models that should be considered?

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CHAPTER 6 (CONT'D): SPECIFIC SUGGESTIONS FOR REFORM

Question 13: What do you think of the specific suggestions for reform (on pages 25-26)?

Consolidated versions – yes good idea with clear tracking of changes

Avoiding Repetition – yes as long as vital definitions do not get overlooked

Environmental Value – No – prefer to stay with the well defined Beneficial Use

Consolidation – yes – good idea – particularly with regard to water policy

Publishing a users guide – not necessarily a good idea as it could lead to anomalous interpretations which may weaken the legal aspects of the policy document

Flexible Amendments – yes essential

EPA DSE roles – yes it would be helpful to confirm

Improving linkages – yes – essential to take into account requirements of Planning and Environment Act and Ministerial directives

Improving Policies – Would be a good objective for the third level documents to ensure they are up-to-date – but the SEPPs should be retained as incontrovertible overview policy documents with little scope to be changed on a regular basis. This depends on removing the specific criteria and similar time dependant objectives.

Improving Reporting – of no great concern to us but an admirable objective

Question 14: What else should be done to make statutory policy more responsive, accessible and easier to apply?

The SEPPs are essentially extensions of the EP Act and are subject to change only through parliament. Therefore they are slow to change to address emerging issues or areas of concern and are fairly rigid in the detail that must be applied (eg tables or species or chemical concentrations etc).

Our suggestion is to make the SEPPs more general and stick to Policy, whilst introducing a second tier of schedules (if that is the right instrument) which identify and address the current and up to date information on chemicals, protection limits for species etc; These schedules would then be able to be adapted at shorter intervals to address changes in understanding of the areas of concern.

An example is the reference to ANZECC Water quality Guidelines (1992) in the Groundwater SEPP whilst the updated Waters of Victoria SEPP references the updated 2000 guidelines.

Another example would be the lack of any suitable guidance on management of contaminated land anywhere in the SEPPs or in national guidelines (The 1999 NEPM only references Assessment), except for the now outdated ANZECC 1992 guidelines.

Question 15: How could the links between statutory policy, catchment planning, statutory planning and other frameworks be improved?

Periodic formal meetings and workshops would facilitate a consistent vision for environmental policy across State agencies and statutory authorities.

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

In regard to the Final Report (objective second half of 2011) we would anticipate that publication would provide an opportunity to examine the range of comments and observations included in the various many workshops and from individual submissions to allow for some further comment on major issues prior to implementation of the policy review.

It is understood that there will be opportunities for drafts and PIAs of individual policies under consideration to be reviewed at the appropriate time.

Note - additional comment on question 16 on next page.

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Questions from the discussion paper

CHAPTER 6: POTENTIAL MODELS FOR REFORM

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

Management of residual contamination. Both the State and Industry would benefit from the introduction of an appropriate means for contaminated land owners/polluters divesting responsibility for residual contamination. Under the present arrangements, whilst there is a responsibility placed on the polluter to “clean up” contaminated land and groundwater, in many cases (both in the past and in the years to come), the “polluting entity” may no longer be around when the time comes to fulfill the responsibility for clean up. Given the current regulatory framework whereby there are provisions for addressing site contamination in perpetuity (assuming contamination still exists) corporations would be eager to divest themselves of on-going liabilities for soil and groundwater contamination, some of which may never result in requiring clean up. On a similar front, industry is currently “contracting out” of residual contamination, however this could lead to a potential shortfall in the years to come if the party that has taken on the liability fails and the original polluter is no longer in existence and further clean up is required.

We would suggest the creation of a pooled fund, with contributions from contaminated land owners wishing to divest their responsibility. The primary objectives for the fund would be to allow industry to acknowledge and pay for, in present terms, any environmental impairment it is responsible for, while at the same time allowing the state to have access to funds to address any “orphaned” sites, if the need arises in future. This can also serve as a means of positively fulfilling intergenerational equity requirements of the current policies.