

25 August 2011

Environmental Protection Agency (EPA)
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To whom it may concern,

Re: Statutory Policy Review - Victorian Water Industry Response

Thank you for the opportunity to respond to the combined DSE/EPA Statutory Policy Review discussion paper. I have attached the combined Victorian Water Industry response to the discussion paper. VicWater has worked closely with the key business representatives to produce a collective view on the Framework for Statutory Policies. VicWater has also encouraged the businesses to submit their own responses in addition to this combined one.

Many of the views espoused in this response were captured at the EPA workshop held on the 26th July 2011; this paper further clarifies the position of the Victorian water businesses on the Statutory Policy Review reform.

If you have any further questions please do not hesitate to contact me.

Yours sincerely



Steve Bird
Chief Executive Officer

VicWater Response

EPA Statutory Policy Review

SUBMISSION

AUGUST 2011



VICTORIAN WATER
INDUSTRY ASSOCIATION INC.
"Innovation, Cooperation and Sustainability"

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VicWater Submission EPA Statutory Policy Review

August 2011

Summary:

Overall the industry supports the relevance of the existing framework, which has delivered a range of positive and measurable environmental outcomes over the past 30 to 40 years. Some of these are noted in the discussion paper such as air quality in the metropolitan area. Consequently the future framework should embrace these positive aspects.

The policies have encouraged a point source pollution focus, which has targeted the easy gains. However it has been less effective in targeting diffuse pollution sources.

A key consideration when developing the new Framework is the specific focus of individual SEPP's, which have been developed in isolation at different times, combined with a point source pollution focus. There have been instances where an individual SEPP has been applied in isolation with a high potential for perverse or distorted net environmental outcomes. A typical example is the application of the SEPP Waters of Victoria (WoV), which provides for interim mixing zones where a point source discharge has a measurable impact on the waterway. However the discharger must take steps over time to reduce and eliminate the mixing zone. The philosophy behind this requirement is potentially flawed for the following reasons:

- ◆ It requires a zero environmental impact for the water segment of the environment
- ◆ It does not recognise that any activity has an impact on the environment to some degree
- ◆ It ignores that the environment has an assimilable carrying capacity
- ◆ Achieving a zero environmental impact on the waterway will potentially come at an environmental impact on air and soil and all the intrinsically linked environmental values due to the resources required to treat the polluting source to the required quality to achieve a zero mixing zone – these resources include chemicals and power with associated environmental impact up the supply chain and further resource inputs to manage waste streams
- ◆ Beyond the environment, there are also associated social and economic costs that may outweigh the environmental gain

The perversion of environmental outcomes is exacerbated by the diminishing rate of returns associated with achieving the next increment of improved water quality.

Persevering with the existing legislative framework will continue to chase improved performance against point source pollution sources with diminishing rates of return. Consequently the framework should consider a new approach that maintains the achievements of the past decades and still achieves environmental gain where appropriate. The framework needs flexibility in approach to account for local/regional context and encourage innovation to optimise net sustainable outcomes based on a TBL approach. To achieve this direction, it needs to embrace the following principles:

- ◆ Management should be risk based and outcomes focused.
- ◆ Target best net environmental outcome from a holistic view of the environment (soil, air and water).
- ◆ Management should be on a TBL or similar balanced scorecard basis, rather than just the environment at exclusion of, or with insufficient regard to economic and social cost.
- ◆ Management should be founded on sustainable outcomes taking into account the capacity of the environment (its resilience) – the key here is that unsustainable pollution would still not be tolerated, although the boundary between sustainable and unsustainable may prove to be problematic.
- ◆ An increased focus on diffuse pollution source management having regard to the principles listed above.

Tools in the subordinate documents of the legislative hierarchy should assist in delivering against the principles. An example might be offsets that achieve a net environmental improvement.

In relation to diffuse pollution source management, a greater focus could be brought to bear on the impacts of municipal development and environmental controls, storm water discharges and septic tank management.

Another consideration is the whole agency responsibility issue, which probably goes beyond the policy review. The lack of clarity for responsibility in catchment management to effectively implement environmental policy is hampering effective management. The number of agency stakeholders and complexity of relationships might be an opportunity for improvement to be at least flagged for consideration beyond this review.

Conclusion

This submission includes comments from the industry representatives. Businesses may also choose to submit their own responses. VicWater is happy to be of assistance and would like to thank the EPA and DSE for the opportunity to comment.

Chapter 2: How Statutory Policy Works

Question 1

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

Worked well

- ◆ High level architecture of the document.
- ◆ Having specific numerical targets – making it simpler to interpret.
- ◆ Certainty of direction over a period of time i.e. for the Water Plan process.
- ◆ The policies generally providing a sound framework for defining environmental objectives and driving environmental improvements.
- ◆ Defining environmental values and beneficial uses to articulate the community's view on environmental quality to be attained/protected.
- ◆ Ability for regional target setting.
- ◆ Defined outcomes for achieving environmental quality objectives where these relate to minimum standards that will apply in licences based on environmental risk i.e. wastewater discharge limits which effectively involve EPA interpreting environmental risk into minimum environmental obligations.
- ◆ Clearly defined objectives for some environmental outcomes.
- ◆ Regulatory Impact Statements (RISs) with explanations on the intent of the clauses in policies.
- ◆ National Environmental Protection Measures which provide consistency across states.

Not worked well

- ◆ Difficulty in reading and interpreting the information.
- ◆ Lack of consistent application of the policies by administrators.
- ◆ Lack of confidence in applying the flexibility of the policies i.e. offset frameworks are a possibility but very difficult to get a stance from EPA.
- ◆ Some terminology is unclear for example what is best practice and how is it defined.
- ◆ Lack of flexibility to update on a regular short term basis.
- ◆ Integration between policies is difficult to interpret.
- ◆ The quality of the maps within the policies are poor.
- ◆ Limited flexibility for staged improvement approach in some circumstances where full compliance is not affordable.
- ◆ No recognition of risk based approach to reducing environmental impacts with projects being required to comply with policy sometimes at the expense of the best environmental outcome.
- ◆ Clarity in responsibility for delivery of outcomes at the broader scale.
- ◆ Coordination when dealing with non-point source issues.
- ◆ Performance can be difficult to quantify i.e. must have certain number of tests to enable comparison to SEPP (WoV) environmental quality objectives.

- ◆ Tendency to have a “broad brush” approach and not enough sufficient supporting documentation to enable implementation of some policies.
- ◆ Insufficient coverage of how environmental issues should be addressed in semi-urban and rural areas i.e. noise policy does not consider areas outside the metropolitan zone.
- ◆ Accessibility of the policies including schedules, ideally there should be a ‘one stop shop’.
- ◆ Broad statements of responsibility for implementation that are not supported by action plans and reviews.
- ◆ Lack of follow through on creation of guidelines by EPA to support implementation of the policy i.e. offsets referred to in SEPP (WoV).
- ◆ Obligations relating to resource efficiency that are driven through SEPPs but not clearly related to environmental quality objectives i.e. SEPP (WoV) aims to ‘maximise’ water recycling but does not adequately relate this to policy drivers/ water quality objectives or other environmental impacts such as increased greenhouse gases/energy use.
- ◆ Reluctance by Regulators to implement some of the policy intent i.e. using recycled water as environmental flows, backlog sewer connections.
- ◆ Inability to apply policy objectives in enforcement actions i.e. if it can be demonstrated.
- ◆ Risk assessment; if the environmental impact is low from a sewer spill the EPA could adopt a less stringent enforcement measure.
- ◆ Diversion of available financial resources to compliance based projects away from other projects that would provide greater environmental benefits.
- ◆ Lack of Regulatory Impact Statements (RISs) measures for some policies i.e. Sewer Backlog and 1 in 5 year sewerage capacity standards which are both not believed to be a significant health environmental issue.
- ◆ Poor consistency of the regulatory focus on all elements of the attainment measures i.e. mixing zone management for Sewerage Treatment Plants (STPs).
- ◆ Lack of robust cost benefit analysis behind the policies; it is recognised that policies can include aspirational goals but more rigour is needed to match the benefit to the cost of the goal.

Question 2

How well do you think the features and obligations in statutory policy are understood? Are some parts better understood than others?

Comments from the industry included:

- ◆ Definition of beneficial uses and environmental objectives are generally well understood, including where these refer to national documents and frameworks e.g. NEPMs, ANZECC.
- ◆ There is a lack of understanding and consistent interpretation of some of the obligations i.e. measures for beneficial use have become the set figure that must be achieved every time there is a discharge to a waterway, it is often written in the 30A approvals to achieve the SEPP standard for discharge, but this is very difficult to achieve from a STP perspective.

- ◆ The interagency responsibilities are not well understood i.e. in the case of septic tank management and domestic wastewater management plans (DWMPs). DWMP's should provide strategic direction for improvement of wastewater management in small communities and unserviced areas; however few Local Government Areas (LGAs) have completed them in sufficient detail for them to be effective. Despite the legislative hierarchy based around DWMP's, LGA's do not seem to be aware of the use of the DWMP under the policy. This lack of understanding leads to lack of certainty in addressing the needs of unserviced areas.
- ◆ Interpretation of some of the policies must be undertaken by someone who has good understanding of environmental legislation. This is largely due to the "broad brush" approach i.e. 'must reduce emissions to the extent possible'.
- ◆ Obligations for policy implementation are best understood where they link to specific guidance i.e. recycling guidelines.
- ◆ Obligations that relate to resource efficiency drivers are not necessarily linked to environmental quality objectives.
- ◆ In some instances, it is required to call the EPA to interpret some of the clauses in the policy. i.e. Clause 35(1) of SEPP (WOV) requires that sewage should be contained within 1in 5 storm events, this requirement is subjective to interpretation and Clause 34 of SEPP requires that a premises must be connected to a sewerage system if the sewer is available but it is not clear who is responsible to ensure that the premises are connected to sewer.

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?

The key risks are:

- ◆ Consistencies within the documentation (structure).
- ◆ Integration between policies – there are some conflicting drivers i.e. energy intensive treatment for improved discharges verses CO2 emissions.
- ◆ Inconsistent interpretation of the policies.
- ◆ Flexibility verses security, an appropriate balance is needed to account for local/regional context and encourage innovation to optimise net TBL outcomes.
- ◆ The policy should recognise corporate licences and the opportunity for a risk based approach and prioritisation to reduce footprints.
- ◆ Climate change adaption strategies are needed as well as allowances for managing obligations during extreme events.
- ◆ Climate variability is a key risk there is a need to ensure that policies that can impact on resilience of the environment are reviewed first i.e. Air Quality management, Land and Water.
- ◆ Alignment with Living Victoria Ministerial Advisory Council work, DSE's waste policy review, and Water Plan timelines.
- ◆ Source reduction measures should be considered in line with focus on reuse and recycling.
- ◆ Clarity around stormwater and recycled water with community responsibilities clearer to ensure that the priority pollutants are minimised.

- ◆ Regional settings should be considered. At present, more emphasis is placed on point source emission which unfairly targets the point source discharges and makes it harder to achieve the objectives of the policy. If the policies are set in regional context, then there are opportunities for collective effort to achieve the objectives.

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?

- ◆ Interpretation of the policy – making this as clear and unambiguous as possible. A guidance user manual that informs the regulator as well as the applicator on how to apply the policy.
- ◆ Flexibility to adapt to situations that are unusual and do not fit the typical mould. As well as flexibility for economic and regulatory price capping mechanisms that may limit implementation in some instances.
- ◆ Co-ordination and management of policies within and across agencies, particularly for water.
- ◆ How to include and regulate a risk based approach and eliminate use of ‘one size fits all’ approach.
- ◆ Being realistic about environmental objectives in the face of increased public pressure on utility prices.
- ◆ Having a holistic view and achieving a balance between all outcomes including community and environment.
- ◆ Adaption to new sciences.
- ◆ Stakeholder engagement when considering standards within statutory policy to ensure clarity and to have a clear understanding of the TBL impacts of particular policy standards.
- ◆ Valuing ecosystem services.
- ◆ Clarity in definition of roles between regulators and policy makers (DSE and EPA).

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?

Examples provided by industry representatives include:

- ◆ SEPP (WoV).
- ◆ SEPP (Groundwaters of Victoria).
- ◆ WMP (Waste transport).
- ◆ Guideline for Environmental Management : Biosolids land application.
- ◆ Guideline for Environmental Management : Dual pipe water recycling schemes.
- ◆ Guideline for Environmental Management : Use of reclaimed water.
- ◆ Guidelines for risk assessment of wastewater discharges to waterways.
- ◆ Bunding Guidelines.
- ◆ Guidelines for wastewater irrigation.
- ◆ Sampling guidelines.
- ◆ Licence guidelines, 1321.2, 1322.3.
- ◆ Section 19 A, Section 19(B), Section 30 A.
- ◆ Landfill guidelines.

- ◆ Fee regulations.
- ◆ Scheduled Premises regulations.
- ◆ Recommended Buffer Distances for Industrial Residual Air Emissions Guidelines.
- ◆ F3 Gippsland Lakes and Catchment
- ◆ F5 Waters of the Latrobe and Thomson River Basins and Merriman Creek Catchment
- ◆ F6 Waters of Port Phillip Bay

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?

Of most use to the industry were the numerical figures for guiding decisions and environmental quality objectives as they are easy to interpret and also provide benchmarks such as the water quality index.

However it was generally felt that all numerical figures, environmental quality objectives that are difficult to measure, and attainment measures are better placed in guidelines as this would help in guiding decisions, be more user friendly, and they would also be easier to update and review.

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?

It was felt that policies are effective at establishing standards for broad environmental segments i.e. water, air, land, and groundwater. Standards relating to specific issues are however best placed in guidance rather than policies. These can then be more easily adapted to emerging issues, priorities, and sciences. There were also concerns raised around finding standards within the framework due to its size and the number of statutory policies.

The standards specified in the statutory policies offer good guidance; it would be beneficial to understand how the limits are set i.e. are they scientific or precautionary.

The regulations and guidelines are generally easier to follow and more clearly articulated than the standards are.

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?

Some value has been provided by the inclusion of roles and responsibilities of agencies and the policies should apply to anyone whose activities can impact on the environment. There was agreement that as the policies are seen as environment protection policies, unless there is direct impact on the environment from the activities conducted by the agencies, there is lack of awareness of responsibilities. One example is the requirements in the policies in regard to the responsibilities of planning authorities in areas such as management of septic tanks. Whilst the intent of the policy is clear, there is no mechanism for bringing the agencies together to work on tackling particular issues. Therefore the feasibility of incorporating the policy requirements in relevant instruments used by other agencies could be considered in relation to planning. Planning Schemes or Municipality Strategic Statements could also include the policy requirements to make them more relevant to the planning authorities.

An example of a successful policy implementation was the nitrogen reduction to Port Phillip Bay where the majority of actions are/were the responsibility of Melbourne Water.

An example of unsuccessful policy implementation: ambient air quality issues in Brooklyn where agency/stakeholder responses are needed across a range of areas to meet the ambient air standards and one action /stakeholder cannot influence the result alone.

Question 9

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

The model for the Victorian Planning framework is a good example of having both State and local objectives within the documentation (legislation), and has a responsible authority with referral agencies to achieve coordination.

Also the fortnightly WorkSafe Safety Soapbox e - news is a useful model of an informative service.

Question 10

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

No comment.

Chapter 6: Potential Models for Reform

Question 11

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

There is support for Modules 2 and 3.

Module 2: Benefits included: significantly reducing the content of statutory policies, with best practice approaches covered in guidance. This model would support more innovation to achieving ambient environmental standards with a 'backstop' of minimum environmental protection specified in regulations.

Module 3: Benefits included: giving opportunity to consider local regional context while having a State section, the key issue is clarity and consistency of the documentation. This also allows a more practical approach locally while still driving environmental improvement across the State. An example is water quality objectives where a regional setting will be useful in making integrated and achievable objectives aimed at various stakeholders, helping them work more closely.

Question 12

Are there other models that should be considered?

Publishing a consolidated version of each policy is supported. The EPA could consider the specific questions raised in the policy matters by customers and ensure those issues are considered in the review.

The policies should be more precise and visionary statements could be provided in guidance documents ensuring the policy documents are shorter.

Question 13

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

There is support for the suggestions ranging from medium to excellent.

In particular:

- ◆ Consolidating policies.
- ◆ Having a single water policy.
- ◆ Avoiding repetition.
- ◆ Publishing a user's guide, including guidance for different industry sectors.
- ◆ Introduction of a flexible amendment process (assuming that this can be undertaken in a transparent and consultative way).
- ◆ The measures suggested for improving accountability, management and coordination.
- ◆ Net environmental outcomes being the focus in setting policies to ensure that actions required do not end up with increased overall impact i.e. setting water quality objectives for wastewater treatment plants without taking account of the greenhouse gas emission objectives.
- ◆ Policy implementation reports to ensure continued momentum.

- ◆ Accessibility improvements such as an integrated web based system.

The only exception to the specific suggestions is using the phrase 'environmental values'. This suggestion would not contribute a great deal to clarifying what should be protected and changes would require excessive administrative changes.

Question 14

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

- ◆ Further integration.
- ◆ Accompanying guidance documents to ensure consistency.
- ◆ Case studies to demonstrate how the policies are being applied to benefit the environment.
- ◆ Inclusion of a risk based model.
- ◆ Understanding of the uncertainty and limitations in data availability for decision making.
- ◆ Reporting through the publishing of data to indicate how the intent of the policies are being achieved.

Question 15

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

- ◆ Clear articulation of what the links are and who is responsible for development and implementation i.e. the lack of clarity for responsibility in catchment management to effectively implement environmental policy is hampering effective management. The number of agency stakeholders and complexity of relationships might be an opportunity for improvement.
- ◆ Ensuring that Catchment Management Strategies, River Health Strategy, Planning Strategies are consistent with policy objectives.
- ◆ Integrated web based system.
- ◆ Clear goals.
- ◆ Establishment of a hierarchy with sufficient resources at each level.
- ◆ Community and Environment Benefit analysis.

Question 16

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

- ◆ Continue active engagement process.
- ◆ Statutory policies should have requirements which are practicable and achievable and uncertain clauses should be removed.
- ◆ The requirements should be specified in the policies and be accompanied by clear guidelines.

- ◆ Ties between various regulators should be recognised i.e. SEPP (WOV) has a provision for using recycled water for environmental flow and there is currently reluctance by the regulator to approve this alternative use.
- ◆ Management should be outcomes focused.
- ◆ Target best net environmental outcome from a holistic view of the environment (soil, air and water).
- ◆ Management should be on a TBL basis, rather than the environment at all economic and social cost.
- ◆ Management should be founded on sustainable outcomes taking into account the capacity of the environment (its resilience) – the key is that unsustainable pollution would still not be tolerated.
- ◆ An increased focus on diffuse pollution source management.
- ◆ Clearly defined mechanism for trialling innovative approaches to finding solutions without creating precedents.