



Yarra Valley Water | *a fresh approach*

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Statutory Policy Review Team
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To whom it may concern,

Statutory Policy Review Discussion Paper

I am pleased to provide Yarra Valley Water's response to the Statutory Policy Review Discussion Paper released by the Environmental Protection Authority Victoria and the Department of Sustainability and Environment dated June 2011.

For further information regarding our comments, please contact Neil Rickard, Divisional Manager Infrastructure Planning on 9872 2620 or at Neil.Rickard@yvw.com.au

Yours sincerely

David Snadden

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

Worked Well

- Having State Environment Protection Policy, Waters of Victoria (SEPP) with a number of appendices dealing with specific catchments, creating a one stop shop on water obligations and strategic drivers.
- Provides support and guidance for undertaking programs that require funding via the Water Plan process
- Provides water quality guidelines on what EPA expects in planning permits and work request for Sewage Treatment Plants.
- In the past it also provided justification for requesting waste minimisation plans for industrial customers. (Based on old sun-set Waste Minimise Policy). Easier to get customers to comply when there is clear directive in the regulations

Not Worked Well

- The lack of a robust benefits cost analysis behind the SEPP is often problematic. A more robust process for determining these benefits and costs is needed. It is recognised that SEPP's can include aspirational goals and typically have an underlying philosophy of using best available technology which means that costs associated with the benefits are difficult to determine but more rigour is still needed.
- Poor or no Regulatory Impact Statement (RIS) of measures within the SEPP. A good example is Sewer Backlog and the 1 in 5 year sewerage capacity standards. Both are based on old water industry guides, both are not believed to a significant public health or environment health issues, both are questioned for the benefit provided for the expense required.
- Poor consistencies of regulatory focus on all elements of the attainment measures. Issues that are hard to regulate and implement are avoided, e.g. mixing zone management for Sewage Treatment Plants (STP). The SEPP was too far ahead of the understanding of how to implement the attainment measure. Guidance was slow and incomplete, with minimal regulatory presence.
- Not enough support to achieve the outcomes from EPA, such as regulations to force backlog sewer connections.

Question 2: How well do you think the features and obligations in statutory policy are understood? Are some parts better understood than others?

- We agree with discussion paper feedback that statutory policies:
 - Can be difficult to understand, but on the whole are much better than the Acts.
 - Long and Overly complex
 - Difficult to navigate
 - Sometimes unclear

- It would be useful to have a summarised version of each SEPP, not only as a quick guide but also as an assessment tool as to a given SEPP relevancy to a given situation.
- We use statutory policy to provide justification to the Essential Services Commission to carry out expenditure on our backlog sewerage and sewer spills programs as part of our Water Plan. However, the environmental benefits of parts of these broad brush programs are difficult to quantify and there may be more effective and lower cost solutions based on decentralised approaches to achieve similar environmental benefits, e.g. regulated use of septic tanks rather than reticulated backlog sewerage which cost up to \$30,000 per lot. It should also be recognised that Yarra Valley Water's customers end up paying a substantial increment on their water and sewerage prices for these programs which benefit all Melburnians.

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?

- In relation to the water industry, the Government has established the Ministerial Advisory Committee on, Living Victoria which is looking at integrated water management solutions and urban liveability. The focus is on the use of water to improve liveability and for decentralised water solutions to provide the next water supply augmentation for Melbourne. One aspect is that externalities need to be taken account of in determining the lowest community cost solution for new developments. The outcomes from this review will shape future water policy and so future environmental policies need to harmonise with these changed directions.
- The water industry functions within a government prescribed regulator period, typically five (5) years, with the next one starting in 2013. The establishment of new requirements is easier to be met if the change coincides with these regulatory periods.
- Lack of clear policy from Government in relation to some areas of environmental impact such as nutrients and greenhouse gas. Clearer direction on the expected outcomes in these areas would inform mitigation activities and investment.

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?

- Better enabling a holistic approach, such as risk based approaches and the use of offsets. For example to comply with some of the attainment program causes issues with other environmental impacts as well as introducing more costs to the community. For example a more advanced sewage treatment will require additional energy use, emit more greenhouse gas, cost more to run for potentially marginal environmental gain. The policies at the moment seem to be siloed and do not take a holistic look across all environmental impacts and do not consider best community and environmental outcomes.

- Regulator vs. policy maker, especially in the context of the roles of the EPA and DSE. One of the main challenges for the statutory policy is the resolution of this relationship and their roles with the policy of the DSE and the EPA. There are many advantages to the separation of policy and regulation, but the best advantage comes in clear definition of roles. This is particularly important in ensuring consistent purpose and development of the policy. Staying relevant and current in light of changing government priorities. For example DSE looks after environment offsetting for native vegetation, not the EPA.
- How does Class-A recycled water and storm water recycling fit into the statutory policy, especially with regulation from the Department of Health?
- While it is alluded to, the process of inclusion of new issues, such as Climate Change is unclear.
- Clarity on key terms and phrases used such as "best practice" and "where practicable" so they are less open to interpretation.

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?

- EP Act and Regulations
- SEPP (Water of Victoria) and the Schedule F7
- YVW EPA Corporate Licence
- WMP (waste transport)

- In particular;
 - EPA Corporate Licence
 - Publication 464.2 – Guidelines for Environmental Management: Use of reclaimed water
 - Publication 168 – Guidelines for wastewater irrigation
 - Publication 1015 : Dual pipe guidelines - Guidelines for Environmental Management: Dual pipe water recycling schemes - Health and environmental risk management
 - SEPP WoV
 - SEPP WoV Schedule F7 Waters of the Yarra Catchment.
 - Other SEPPs as required. Air, Noise, Groundwater
 - Enviro Act G generally and in the last couple of years specifically Section 30A of Enviro Act - Emergency Discharge Provision.

- Guidance material is the most heavily used documents used by the Treatment Plants area. Particularly Recycled Water guidance material. While the simplification that guidance provides in the area of licencing is highly valued the room for interpretation afforded by guidelines can be sometimes be challenging especially when the regulator's interpretation continues to evolve over time.

- We also support the clarification of the legality of guidance and compliance / non-compliance with these instruments. Especially as they appear to be ranked as the lowest in terms of legal weight in the discussion paper.

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?

- Obligations specified in SEPP provide a clearer requirement to obtain funding in Water Plan. If it is moved to other places it needs to ensure that it has enough legal weighting to maintain funding justification.
- The attainment measures are essential and while some could be better utilised, such as mixing zones and offsets, they do provide the clearest understanding of how to achieve compliance with the SEPP.
- While the concept of the Corporate Licencing approach has promise and has reduces administrative effort. The integration of the Corporate Licence and the SEPP remains unclear.
- Offset as previously mentioned should also be included in attainment programs to derive the best environmental outcomes.

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

- It is beneficial to have all standards linked and measured against a desired outcome.
- The standards specified in the statutory policies offer good guidance. It would be beneficial to have an understanding of how the limits are set; whether they are based on any scientific basis or arbitrarily set based on the precautionary principle.
- The standards need to ensure that they have a robust benefits cost analysis. It is recognised that SEPP's can include aspirational goals and typically have an underlying philosophy of using best available technology which means that costs associated with the benefits are difficult to determine but more rigour is still needed.
- All standards should be periodically reviewed, to ensure their appropriateness and effectiveness. A good example is Sewer Backlog and the 1 in 5 year sewerage capacity standards. Both are based on old water industry guides, both are not believed to a significant public health or environment health issue, both are questioned for the benefit provided for the expense required.

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?

- Clearly specifying roles and responsibilities is a good thing. The only question is whether it should sit in the policy.
- Clarity of the statutory policy would dictate the roles and responsibilities of the agency are excluded, as they do not directly relate to that policy.

- A clear distinction between regulator and policy setter would be appropriate.

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

None, other than is already outlined.

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

- Statutory policy for environmental offsetting and holistic environmental management approaches are much better developed in other states and internationally.
- Clear setting of policy objectives and outcomes. Specifically linked to policy standards.

Chapter 6: POTENTIAL MODELS FOR REFORM

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

- Our preferred recommended statutory policy model is model 3, followed by model 2. Model 3 appears to provide the most practical approach in terms of local approaches while still driving at environmental improvement across the state, with a good balance between, Act, regulations and guidance.
- We believe is beneficial to establish a model that is less complex, easier to understand, simpler to reference and more definite.

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

- The Four Models along with their derivations are believed to be sufficient. The real test is in their application and the detail of their design.

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

- A single policy for water is a good idea.
- We like the reforms suggested especially publishing a user guide.
- We like the idea of the policy implementation reports as it keeps momentum going instead of the current hiatus that reaches a crescendo with new SEPP then dies away. This will allow for a review if goals are attained early. Flexible amendments seem logical to keep SEPPs current.
- It is preferable to adapt existing reporting requirements rather than creating a new reporting requirement. Every request for information should be reviewed and considered to ensure it is necessary as well as beneficial for a defined reason.

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

- The single largest effect, outside of the policy itself on its responsiveness, accessibility and ease of application is the attitude as well capability of the agency applying the policy. It is essential that the agency has the required strategic direction and capability to implement the improvements specified in statutory policy.
- It would be extremely beneficial for the agency to be mindful of these desires of responsive, accessible and ease, especially when examining its own effectiveness in achieving the environmental outcomes.

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

- Clear goals.
- Community and environment benefit analysis.
- Simplified defined linkages. That is, don't isolate policy from planning and other frameworks.
- Establish a hierarchy, insuring that correct reference and inclusion occurs.

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

- It would be beneficial if the SEPP had a clearly defined mechanism that allows for innovative approaches to be trial in a safe place for EPA and the water industry. As one of the barriers to innovative solution is the perceived possibility of creating a precedent.