

30 October 2015

To whom it may concern

### **Inquiry into the Environment Protection Authority**

South East Water would like to thank the Ministerial Advisory Committee for the opportunity to provide comment regarding the Inquiry into the Environmental Protection Authority (EPA) with respect to its relevance to the water industry. Please find attached a brief overview of the opportunities that have been identified relating to the scope of the inquiry as well as addressing the questions raised in the discussion paper.

South East Water is well aware that the EPA is a critical and strategic stakeholder in relation to our current and future operations. Historically we have had a sound relationship with the EPA, built on strong environmental performance and exchanges including;

- Incident notification and detailed investigation reports, as well as applications for Works Approvals and operational meetings;
- Working on policy development and guideline reviews, with South East Water leading the development of the industry wide sewer spill notification protocol;
- Working with EPA on partnership programs such as the Yarra River Port Phillip Bay Action Plan and water quality improvement in the Tanti Creek catchment; and
- Involvement in EPA stakeholder committees such as the VicWater/EPA Water Industry Reference Group.

As an organisation we have felt it is important to be pro-active in our engagement with the EPA.

The strength in this relationship is reflected in a range of ways, including South East Water being approached to be the first Corporate Licence holder in Melbourne and EPA agreeing to work with South East Water to implement their first Enforceable Undertaking. Importantly, South East Water has strong environmental performance, illustrated by achieving 100% compliance with EPA discharge licences for the past decade and in Essential Services Commission and Water Services Association of Australia benchmarking reports. Recently, South East Water was recognised as a Tier 1 performer in EPA's Earned Autonomy pilot program.

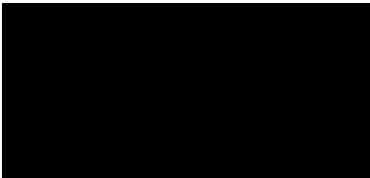
As an overview of our more detailed comments attached South East Water's key opportunities for the EPA reform are:

- Moving towards a risk-based regulatory approach. Where there is a mature, industry leading understanding and commensurate management systems (e.g. in our case Biosolids management) there should be significant reduction in regulations;

- Holistic objectives and targets with *flexible structures* for implementation (in particular providing a focus on a catchment approach rather than specific point source discharge from a treatment plant);
- A stronger focus on enforcement regarding diffuse source pollution;
- Clarification of EPA's role in objectives for climate change management;
- Clarification of the EPA's role to enable more efficient outcomes when it has potential to interact with that of others such as the health or workplace regulators.
- A regulatory model that delivers better environmental and community health outcomes at lower cost to communities;
- EPA officers empowered and resourced to contribute to flexible, sophisticated solutions;
- Direct input into the planning scheme to proactively manage emerging issues (e.g. odour buffer distances );
- Expansion of the Earned Autonomy concept; and
- Segregation between the policy/strategy setting role, implementing role and the regulatory role.

If you are seeking clarification on any issues raised in this submission or to answers to any further questions that arise, please do not hesitate to contact Jon Theobald on 9552 3412.

Yours sincerely,



Rex Dusting  
**General Manager Infrastructure**  
**South East Water**

**Do you think the key environmental challenges which will impact the EPA in the future have been captured?**

The discussion paper articulates a number of key challenges facing EPA into the future. South East Water recognises this is the first step in the process of reforming the EPA and would like to provide the following input into future environmental challenges, bearing in mind we may not be able to provide all the answers.

The paper doesn't clearly articulate the challenge of diffuse source pollution. South East Water has extensive experience dealing with EPA regarding licensed point source discharges to the environment. We recognise this is an environmental risk and manage it accordingly. Our belief is that currently in many cases the non-licensed discharges within the catchment have a significant accumulative effect and warrant greater emphasis. Accordingly, EPA need to take a catchment wide approach when considering the impacts of licensed discharges. Greater community/environmental benefit could be achieved by addressing the cumulative impact of diffuse pollution. The historical focus on licensed discharges appears to have achieved a significant benefit in improving point source discharges (e.g. EPA's licence reform program) and further emphasis may lead to significant community costs with minimal environmental benefit.

**What aspects of EPA's work do you value and wish to preserve in the future?**

**How can the EPA effectively work in partnership with other government agencies to meet the environmental challenges of the future?**

South East Water values the role EPA plays in protecting and maintaining a healthy environment. We strongly support EPA managing environmental enforcement and compliance with regulations, providing expert environmental advice and collaborating with industry to achieve best environmental outcomes at lowest community cost. We do not believe EPA should be developing policy, although there is value in EPA providing technical input into policy development. The SEPP Waters of Victoria is an example which appears to be working well.

If EPA is interested in working effectively with other government agencies they need to be able to comfortably distinguish between their role as either a regulator or partner. South East Water has experienced a reluctance of EPA officers to partner with agencies in major investment decisions early in the design process. There appears to be a conflict between being the regulator and the environmental professional providing practical advice. EPA's current preferred method is to request written documentation (e.g. Works approval) and formally process this information. A preferred method would be to work with organisations in assessing environmental impacts and options, in order to develop a cost effective and streamlined result. Working together we can develop clarity on and achievable sustainable environmental outcomes. Obviously this investment would require additional resources within EPA, resulting in a net reduction in bureaucratic delays and a positive outcome for organisations and the community.

The resources and local knowledge the water industry has acquired over numerous years of working with our customers (be it industrial, commercial or residential) is still untapped by the EPA. In order to fully develop partnerships and exploit the ability of the water industry to assist EPA with on ground activities, EPA needs to have the ability to detach itself from the pure regulatory role and embrace a strong working partnership mentality. For example, South East Water's trade waste team with the necessary privacy protocols in place can be a useful resource for EPA to draw upon when evaluating the impact of and developing the right incentives for efficient management of various industrial sectors.

**How can the EPA's role in safe guarding the community against the health effects of pollution and pollution incidents be clarified or strengthened?**

The key requirement in this question is clarity. In order to achieve strong regulation with regards to community health effects of pollution, EPA need to have a clear and transparent regulatory structure. A good example of the lack of clarity is the reuse of recycled water. EPA oversee the recycled water guidelines but in reality the environmental risk is often comparatively low (compared with the complexity of the health risks) and therefore EPA's understanding and resourcing of recycled water is reflective of the risk. The EPA need to clarify the environmental/health issues they are interested in managing and provide the resources and regulatory structure to do so. Regarding recycled water, EPA for some end uses, need not be involved in the management of this resource and leave it to the health regulator to set out the regulatory and reporting requirements and for the water corporations to manage the risks. If the water corporations fail to do so, then the health department can apply compliance and enforcement action.

**How could environmental regulation and other statutory frameworks more effectively prevent future environmental risks and land use conflicts?**

Conflicting land uses is a major concern for the water industry. We are finding it is becoming more prevalent as population is expanding and development encroaches around our treatment plants. It is therefore imperative that EPA play a significant role (ensuring the buffer distances outlined within their own guidelines are enforced) to protect the community at the planning level. Rather than having to address the issue once residential development has been established, EPA needs to work with water authorities and be more active in its role as a referral authority providing the resources required to protect the community from inappropriate development e.g. residential and commercial land use zoning too close to treatment plants.

**What role should EPA play in emergency management?**

EPA's role in emergency management is similar to the role they play in policy development. That is; to provide expert agency advice when required. For significant State emergencies the *Emergency Management Act* clearly articulates the lead agency roles and responsibilities. EPA should play a supporting role within this framework. For smaller scale environmental incidents e.g. sewer spill to a waterway, EPA should play an overseeing role, to ensure the responsible agency responds appropriately. There is no need for EPA to play a lead role in a waterway clean up, as the water authority will have far greater knowledge and understanding than the EPA officer. It is up to the EPA officer to ascertain that the

water authority demonstrated they responded accordingly and if not, the EPA compliance and enforcement policy can be applied.

**What role should the EPA play in improving environmental outcomes beyond those necessary to safeguard human health?**

There is strong correlation between safeguarding human health and maintaining a healthy environment. Currently, it is unclear as to EPA's appropriate role in relation to the overlap between environmental and public health issues. Recent experiences, that served as part of the impetus for this Inquiry (such as the Hazelwood Mine fire), could be interpreted to suggest that the public sees a broader role for the EPA than that which is currently set out in its governing Act and regulations. It is difficult for South East Water to specify where this distinction is made but we encourage the review to ensure that it fully reflects the wide community view in this regard. Aids to informed community feedback – such as clearly setting out the financial and social implications of different regulation are important. Nevertheless as set out elsewhere in this document we see that although EPA can provide information for decision making there role should remain separated from the policy making role.

There is a need for the community and industry to be clear on the jurisdictional boundaries between regulators. The distinction between human health and environmental issues is a blurred one and splitting roles among regulators will necessarily involve drawing an arbitrary division. Nevertheless it is critical to maintain a division although being mindful not to create duplication of regulatory responsibilities as an insurance policy against leaving a gap. We mentioned earlier the complexity of intersecting regulatory roles as it applies to re-cycled water. Similar issues potentially apply with respect to ground contamination and workplace safety.

South East Water strongly supports EPA's move towards Earned Autonomy where high performing organisations are rewarded through greater autonomy and lesser performing organisations receive greater assistance to perform better. This model may assist EPA in encouraging organisations to go beyond just human health, and achieve a healthy thriving environment as well.

**What role should EPA play in reducing greenhouse gas emissions (GHG)?**

There appears to be no clear guidance from the EPA regarding reduction in GHG emissions. South East Water's experience when dealing with EPA around GHG emissions is that there is greater emphasis on the end product e.g. discharge quality of effluent into the environment, rather than the consequential use of energy to produce a high quality product. Given the constrained local environmental improvements that result many in the community may see this as ineffective and inappropriate. If the EPA plays a stronger role in reducing GHG emissions there will by necessity need to be consideration of energy consequences of achieving better local environmental outcomes. It is essential that a transparent framework be developed in order to achieve a consistent outcome.



**How do you see environmental justice being applied to the work of the EPA?**

South East Water's vision is *"Healthy water for life"*. We believe all our customers have a right to clean water and adequate sewerage services. South East Water recognises the importance of our customers as people we have a relationship with, which extends further than a customer and business endeavour. We acknowledge our obligations and liabilities and seek to work with all of those who are involved in any activity or action which may cause any negative effects. Our Customer Charter outlines the customer service standards we aim to deliver. The Charter was prepared with advice from our Customer Consultative Committee. At South East Water, we aim to meet or exceed customer expectations in relation to the range of services we provide.

We have a number of experiences where our infrastructure has impacted on the community and individuals and proactively worked with the impacted parties towards a practical solution, such as financial / compensation or on ground improvements. For example, as part of South East Water's biggest environmental program, Peninsula Eco (sewering the southern Mornington Peninsula), we are installing odour controlling carbon filter units. To ensure the impacts on community are minimised we undertake a thorough community consultation regarding the location of the units. Additionally, we will enclose the units with brush fencing to minimise the visual impact and if desired we will even paint the units a preferred colour of choice. Most importantly, we engage closely with those individuals and community to build trust in our service and organisation. This is how South East Water delivers environmental justice. Importantly this is done without EPA regulation. For the EPA to seriously apply environmental justice they will need a close working relationship with industry as well as a thorough understanding of the communities requirements, which would require significant resources.

A solution to addressing environmental justice is via the piloting project the EPA is delivering 'Earned Autonomy'. As articulated earlier in this response the "Earned Autonomy" framework strongly supports the environmental justice methodology. Again South East Water supports this approach.

Social justice also implies consideration of the financial consequences of decision making on environmental issues. As the costs of environmental improvement are spread across all of our customers, consideration needs to take into account relative costs and benefits. The cost of requirements for local improvements must not have an undue financial impact on those who can least afford the cost without having ability to benefit from the improvements.

**What can we adopt from other regulators and regulatory models to implement best practice approaches and ensure that the EPA can rise to key future challenges?**

South East Water supports the journey EPA is on towards a more risk-based, flexible regulation for licence holders. The earned autonomy pilot program is a great example of moving towards a modern regulator. We believe there is still room for improvement in terms of regulating organisations that have mature systems in place to manage low environmental risk activities; for example the application of Biosolids or the reuse of recycled water. There is opportunity to move away from stringent reporting regulation to a risk based regulation that empowers the water corporation to accordingly put in place the mitigating controls and provide a simple statement to EPA that the organisation has abided by the actions stated.

This would be similar to the Annual Performance Statement that is supplied to EPA each year for Licenced premises.

South East Water works in a heavily regulated environment and are exposed to good and bad regulatory examples. We believe the model applied to the Drinking Water Guidelines by the Department of Health and Human Services (DHHS) works well. There are strong linkages to the national guidelines. It is risk based and consistent across the country eliminating any conflicting State issues. Additionally, they also draw on international organisations (such as World Health Organisation) and deliver a consistent approach throughout DHHS regardless of which individual you deal with.