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Environmental Protection Authority
Public Enquiry
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PUBLIC ENQUIRY INTO THE ENVIRONMENTAL PROTECTION AUTHORITY VICTORIA

Firstly, let me note that the appointments of Ms Cheryl Battagol as Chair of the EPA and Mr John Merritt as the CEO following the rather scathing reports by the Ombudsman, 2009 and the Auditor General Victoria, 2010 into the EPA has resulted in number of positive reforms which are still being instituted. Major reforms take time to bed down. I believe that a number of the reforms have yet to be incorporated into the culture of the EPA. I feel that the current CEO is committed to further reform the EPA.

I have been involved with the EPA since 2007 when I joined a community group seeking the closure of the Tullamarine Toxic Waste Dump. I participated as a member of the Community Reference Group conducted under the auspices of Mr Stan Krpan in 2010 attending five of the forums. I have also participated in several open house community forums.

My first encounter with EPA was as a community member of the Tullamarine Landfill Rehabilitation Advisory Committee (TLRAC). After the abandonment of that committee by EPA and Transpacific Industries (TPI) I represented the Community in the negotiations with EPA and TPI with a view of reconstituting TLRAC under the auspices of Ofcor Sharp. Because of my involvement in those negotiations I did not nominate for a community position on the committee believing a conflict of interest existed. After some time TPI disbanded TLRAC and created a TPI/Community forum at which EPA representatives attended. These forums were unsuccessful in that the community was unable to influence or inform the decision making processes. Eventually a Facilitator was appointed and the Tullamarine Landfill Community Consultative Group (TLCCG) was created.

Throughout the life of TLRAC I was rather disillusioned with EPA. Instead of presenting as champions of the environment and community adversely impacted by the poor management of the Tullamarine Toxic Waste Dump the EPA sided with the TPI over the health and wellbeing of the community and the environment. Concerns raised by the community were either dismissed or ignored. EPA knew best or so it thought. It may have been forgotten but for years the first impression for visitor to Victoria arriving at Melbourne Airport and the last thing imprinted on their memory was the stench from the Tullamarine Toxic Waste Dump yet the EPA consistently denied its existence or just refused to act.

It was not until the reforms arising from the Compliance and Enforcement Review, completed circa 2011, started to take effect that EPA officers showed more respect for community concerns and contributions.

Much could be said regarding the failure of EPA and the mismanagement of the Tullamarine Toxic Waste Dump but that is in the past and we, the community, are looking forward to the future to ensure our grandchildren are never exposed to the slip shod practices that EPA permitted at that site. It is probably too late for our children for they too were exposed to the vapours, dust, airborne toxins and the leakage into the Moonee Ponds Creek. Poor management has ramifications long after the event. In the case of the Toxic Waste Dump probably several generations.

The comments in this submission are made in the light of the changes wrought by the previous CEO and the current Chair of the EPA.

1. *The EPA's appropriate role in relation to public health issues, including at least: community concerns such as exposure to asbestos, chemicals and other pollutants; the prevention and management of site contamination, air quality, and water quality in rivers and other waterways*

The EPA, along with the Department of Health, are seen as the protectors of public health. The EPA is, in many ways, is perceived by the community as the frontline protector. Unfortunately, the long held perception that the EPA is too close to Industry has not yet been dispelled. Prima facie the EPA continues to place the commercial interests of Industry before the health and wellbeing of the Community. For instance, in the case of the Morwell coal mine fire the EPA should have been in a position to:

- a. Overrule the Chief Health Officer's action to arbitrarily increase the maximum safe levels of air borne pollutants in what was seen as political expediency;
- b. Order the evacuation of residents to a safe area; and
- c. Order the appropriate clean-up for residences and properties affected by the fallout of pollutants from the fire.

Air quality is not managed well. All too often the monitoring devices are not sited in places where the level air pollution is best detected nor sited in the areas of worst pollution. Detection monitors need to be placed both upwind and downwind of suspected air pollution sources. In that way the amount of pollution can be determined more accurately. All too often local residents complain of detection devices sited up wind and well away from the source.

My understanding is that during the operation of the Tullamarine Toxic Waste Dump there was one air quality monitor situated in the northern section of the dump, ie upwind of all the airborne pollutants and vapours. The records for the period are few and far between.

When determining whether or not an industry may discharge pollutants into the atmosphere, each case is considered in isolation whereas the ambient air pollution levels should be taken into account. Air quality is being compromised by allowing an additional pollution load where the ambient pollution levels are already high.

As our population increases along with higher density living air and water quality become more important. Higher density living means greater concentration of vehicle exhausts. EPA must be vigorous in monitoring exhaust emissions. Our waterways will be impacted by the additional runoff from roofs and roads. Rubbish will collect in stormwater drains and be flushed into to water ways and the bay. EPA needs to assume a greater role in planning matters, imposing conditions upon developers to ensure rubbish and harmful runoff does not enter the waterways nor does the polluted stormwater find a pathway to the groundwater.

Climate change will bring new challenges to the EPA. Whether it be bushfires, prolonged drought, flood or algae bloom the EPA will be called upon for advice as to the mitigation of the environmental impacts these events will cause. The time is now for the EPA to develop

internal structures to cope with the impact of such events. It does not mean the EPA must have the knowledge residing within but it does mean the EPA must have people who understand the problems and where to obtain specialist advice etc.

In order for the EPA to protect the environment and community health the EPA must have, and be seen to have, the powers to close offending industries and prevent inappropriate developments. If these powers exist there is scant evidence of them being applied. All too often the EPA fails to act decisively. Whilst a cooperative and consultative approach is preferable when regulating industry the EPA appears to continue the consultation long after it is obvious the offending industry persons have no intention of changing their ways.

In summary the EPA must be seen as a strong regulator. To achieve this the EPA must act more like an enforcement body rather than a conciliation body.

Should it be necessary to strengthen the EPA Act to give stronger powers of enforcement to then EPA then please make it so.

2. the Victorian community's and industry's expectations of the EPA as its environmental regulator

The community expects much of its EPA. The EPA is the regulator, the enforcement body and an education body. As a regulator the community expects the EPA to regulate and enforce without fear or favour. Unfortunately, perception is reality and while it is easy to pick off the small operator by all appearances the EPA repeatedly fails to enforce regulations against larger companies. I am sure there will be many examples cited by groups representing communities directly impacted by the failure of EPA to be a strong regulator.

From the perspective of this community member whilst there is evidence of improved communication and consultation the EPA still has a way to go to show it is really listening to the community and placing the welfare of the community and the environment ahead of the business interests of industry. The only manner by which this will occur is through the EPA enforcing regulations and where it is made clear that the health of the community and the environment is not, and will not, be compromised.

3. the EPA's appropriate role in protecting the environment

I am sure there are those in the EPA who believe that role is fulfilled but when the community sees Notices and Directions being ignored with seemingly little or no consequence the faith in the EPA is eroded. Offensive odours continue from industries. When driving on the Western Ring Road about to join with Geelong Road the foul odours assails the nostrils. Whilst the severity of these odours have diminished over the years there are still times when they make me feel nauseous.

At Tullamarine the full extent of the polluted ground water plume from the Toxic Waste Dump has never been determined. The ground water is unfit for Segment B purposes. Despite pleas from the community for a full mapping of the extent of the pollution plume the site management has refused and the EPA has failed to order such mapping and neither has EPA ordered the ground water be cleaned up preferring instead to declare the water unfit for use. No punitive action has been taken with respect to the pollution of the groundwater.

All too often "blame shifting" is used to avoid responsibilities. Melbourne Water is responsible for the health of waterways so EPA does not act to check water quality. The EPA should be the premier umbrella environment protection body. It is the EPA who should be responsible for setting annual programs covering the sites and frequency of water quality testing. It is the EPA who should set the standards, practices and policies drawn from

world's best practice while other agencies hold the responsibility for implementing the standards, practices and policies. In other word the EPA has, or should have, four major elements:

Regulation – Makes regulations sets standards, policies and practices designed to protect human health and the environment to the maximum extent achievable.

Enforcement – Enforces the regulations, operates on the precautionary principle and when in doubt put the environment first.

Education – Advise and educate industry and the community on matters of regulation and enforcement

Auditing – A new role in which the EPA audits other agencies in much the same way as the Auditor General and Ombudsman.

4. *The ability of the EPA to ensure that the principle of environmental justice is adhered to, the environment is protected for the benefit of the community, and members of the community can be meaningfully involved in, and access fair treatment through, environmental regulation;*

The EPA is unable to ensure adherence to the principle of environmental justice. Three major waste hubs were approved under the previous Government led by Mr Napthine. These three hubs are in the North and West. The northern, north western and western suburbs are, once again, being sacrificed. And that is not environmental justice. Also, at least one council, Wyndham, has constructed an above ground disposal facility, taking waste from several municipalities and resulting in a "waste mountain". The mountain of waste actually impedes the view of the You Yangs from the Maltby bypass road. Never mind the offensive odours that impact on the homes in vicinity. The flat terrain does nothing to impede or deflect the on shore breezes which carry these foul smells. The EPA appears powerless, or is unwilling, to prevent such "waste mountains" nor is the EPA able to, or it is unwilling to, order the practice to cease. Under no circumstances should the EPA allow the northern, north western or western suburbs to be the waste dumping grounds for the greater Melbourne area. The construction of "waste mountains" to cease immediately and instead focus attention upon Waste recovery. In other words, the EPA should promote waste as a valuable resource just waiting to be exploited.

In allowing the above areas to be the dumping ground for Melbourne's waste the EPA has demonstrated that the EPA:

- a. Has little or no appreciation of what Environmental Justice means; and/or
- b. Lacks the incentive or the willingness to ensure adherence to the principle of Environmental Justice; and/or
- c. Does not have the power to enforce adherence to Environmental Justice.

5. *the ability of the EPA's current governance structures and funding arrangements to enable it to effectively and efficiently discharge its powers, perform its duties and implement its required functions*

Under the previous government the EPA was savaged by massive funding cuts. These cuts occurred at the time EPA was building up the necessary expertise to perform its duties and to implement required functions. EPA requires expertise in a number of areas. It is of little or no use to insist upon environmental auditors, audit reports and reports from experts when the EPA, as the approving body, lacks the necessary expertise, or access to the necessary expertise, to read, comprehend and independently review all such reports and recommendations. The EPA requires additional funding to efficiently discharge it powers, perform its duties properly and to implement required functions. Additional funding could be obtained by a surcharge on the Waste Management Levy and a fixed percentage of moneys collected through enforcement fines.

The EPA also needs access to sufficiently sensitive testing equipment that can test for a wide range of harmful airborne, soil borne and water borne pollutants to very low levels. Anecdotal evidence is that cost determines the sensitivity of the equipment – ie the EPA can and does procure several less sensitive test kit items for the price of one item of greater sensitivity.

6. *the scope and adequacy of the EPA's statutory powers, and the effectiveness and efficiency of the suite of tools available to and utilised by the EPA, in enabling protection of the Victorian community and the environment, particularly in light of recent, new and emerging risks and issues*

All too often the EPA is limited in what it can do through inadequate legislative powers. As the law stands the EPA has no direct control over the disposal of Buffer Land after Landfill operation cease notwithstanding that there are safety concerns arising from airborne pollutants and ground water contamination. The Brookland Green Estate and the Tullamarine landfill are such cases. By giving the EPA control over the buffer lands the EPA is in a stronger position to prevent the owner from disposing of the buffer land and/or allowing development to occur before the materials in the landfill have broken down to a benign state.

The EPA requires strong powers to intervene in the planning process. At present, the EPA is one of the advisory bodies should the Planning Authority choose to refer the matter to the EPA. This is not good enough where contaminated land is concerned, where landfills are within 5 km of the proposed development and where planning authorities and VCAT permit encroachment on protected areas and buffer zones. Where EPA recommends against rezoning and other planning amendment requests planning authorities and VCAT must be prevented from overruling such recommendations.

The EPA must have the power to increase statutory buffers when in its considered opinion such increases are warranted to protect human health and the environment.

7. *any other matter reasonably incidental to these above matters*

Regulations invariably arise from unprincipled behaviour. All too often morality is sacrificed for greed. Reports by the Ombudsman into the Brooklyn Green fiasco and the Auditor General's report in to the EPA concluded that EPA had placed economic considerations above that of the environment and the human health. The MAC is being asked to consider the best way to combine environment protection with economic viability and growing sustainable jobs in Victoria whereas the above reports made it clear that EPA should not be placing the economic interests above the interests of the environment.

1. **Buffer Zones:** Victoria has failed to set buffer zone for Hazardous (Toxic) Waste Landfills. In 2000 the European Union set a buffer of 2km. *EPA 788.1 Siting, Design, Operation and Rehabilitation of Landfills (2010)* requires Type 2 (municipal waste) landfills are required to have a 500 m buffer from buildings or structures for 30 years post closure, type 2 (inert waste) landfills are required to have a buffer from buildings or structures of 200m for 30 years post closure. BUT for Type 1 landfills (Toxic Waste) there is no 30 year buffer. There is nothing. Surely, there has to be a statutory buffer for Toxic Waste closed landfills and surely this has to be greater than 500m. Since the Fiskville use of contaminated water and associated cancers was exposed I understand a Zero Risk Zero Harm policy has been adopted. This policy needs to be applied to the Tullamarine Toxic Dump buffer land. This matter is urgent. The owner of the Tullamarine site is, once again, seeking to have the buffer land rezoned to commercial. It is imperative that the MAC direct the EPA put in place a statutory buffer before the land can be rezoned and subsequently sold

off. Unfortunately, I understand that the EPA has chosen not to oppose the rezoning. This demonstrates that the EPA is failing in its primary role of protecting the people and the environment and the lessons of Brooklyn Green have NOT been learned.

2. Mining vs Food Production: This may be a little difficult but necessary. Miners seem to think they have more rights than anyone else. They enter food production land and by their operations render the land unsuitable for food production. Clearly the imbalance must be reset. People cannot eat coal or survive on the products of fracking. The EPA must have the power to deny mining in food bowl and food production areas.

3. Auditing and Environmental Auditors: The current governance arrangements has EPA accredited auditors being hired by, paid by and reporting to industry. This arrangement is unsatisfactory. Firstly the company can hire whom they see as "soft" and consequently from an outsider's perspective the auditor's independence is compromised. The perception is simply that any consultant, in this case the auditor, is beholden to the "Pay Master". Upset the "Pay Master" and there will be no future work. The public perceives that reports will be cleared, or sanitized, by industry before being presented to the EPA. Only under a regime where the EPA appoints and pays (from the landfill levy) the auditor, manages the process and receives draft reports and progress reports prior to or at the same time as industry can the auditor truly retain the necessary level of independence and gain the trust of the impacted community.

4. Milestone and Other Monitoring: There are insufficient staff or governance structures in place to ensure the EPA is able to ensure dates and conditions set in licences, Pollution Abatement Notices, Auditor recommendations and other instruments track and monitor the implementation of the Auditor recommendations. Systems are required to dates and conditions are met and if not met, auditor and consultant recommendations are implemented and where appropriate correction (punitive) action instigated.

5. Community Consultation: Under the reforms initiated by Mr Merritt the EPA started to consult more widely. The community, mainly via community groups, was included in discussions about the direction the EPA should take on a number of matters. This is a positive step. However, that has been little or no feedback as to how the community has influenced the outcome of the consultations.

6. Legacy Issues: The big sleeper in protecting the environment is the adverse impact of past practices. Tullamarine Toxic Waste Dump and Fiskville come to mind. At this stage of the reform process the legacy issues are not being adequately addressed. Nearly all the resources are being taken up with ongoing issues – Morwell fire, asbestos mishandling, polluted waterways – the list goes on. Unfortunately the legacy issues are those that pose the biggest risk. No one knows what will happen in the future for there is no control. We just hope for the best. Toxic chemicals combining to form new substances to leach into the ground water, chemicals in the toxic leachate contaminating the ground water and travelling under nearby residences (it may be there already but EPA refuses to direct the tip site owner to ascertain the full extent of the plume), release of fugitive gasses into buildings, underground fires and worse still the impact of long term exposure to small amounts of toxic chemical cocktails. The cost of clean-up, let alone the cost in human life is difficult to calculate.

7. Landfills, Rubbish and Waste Recovery: It is said that one man's waste is another man's fortune. Waste is a valuable resource in the hands of recyclers. The EPA could and should take a lead in promoting the recovery of so called waste. Indeed when the EPA is considering proposals the recovery of used items including packaging must be considered. As our population increases so will the amount of waste going to landfill unless positive action is taken to reduce waste. A number of government bodies exist to examine and plan for the future of greater Melbourne and the state. Representation on these bodies at a senior

level by EPA to ensure two way influence on the direction and actions of EPA and the other organisation.

8. Vitality, Vigour and Enthusiasm: "Established under the Environment Protection Act 1970, EPA is the world's second oldest environmental regulatory agency.^[4] It was established to address environmental problems across the state in a systematic and integrated way, bringing together a range of legislation and powers to be administered by a central authority." When first formed the EPA presented as a vigorous organisation full of vitality and enthusiasm. The staff approached their task of cleaning up pollution in Victoria with straightforward honesty. Unfortunately this did not last as a Government of the day, not unlike the Bailleau led Coalition, slashed funding and emasculating the very experts needed to enforce the EPA Act. The vitality of those early days appears not to have manifested itself in the public eye despite the efforts of current senior management. There appears to be little enthusiasm to tackle the "big end" of town or the really hard issues. Try as we may the EPA refuses to insist upon determining the full extent of the pollution plume spreading out from the Tullamarine Toxic Waste Dump and no action has been taken against those that permitted the contamination of the ground water. Instead the EPA has declared the ground water unfit for Segment B use without any compensation to the community.

9. Proactive v Reactive: EPA is seen as a reactive organization whereas the EPA should be a proactive organisation. Instead of waiting for complaints or something to happen the EPA should be looking for potential hazards whether it be from closed landfills – methane leakage, waterways – test for contamination as a matter of course. The EPA should have plans in place to manage disasters such as fire at Coode Island, bush fires in catchment areas, major spillages at an oil refinery or chemical manufacturing plant. This does not necessarily mean hands on but the environmental plans should be in place and it is the task of the EPA to ensure they are.

10. Need for an Environmental Court: There are those in industry who appear unable to put the environment and human health before profit and short term gain. Worse still, VCAT seems to be incapable of putting the interests of the people and environment before the planning considerations. Over the years VCAT has adopted a very narrow view in the planning area and VCAT seems resistant to change. The community matters little in its deliberations. The State needs a forum where the interests of the environment and human health play a far more important role. A simple way of obtaining this would be to create an Environmental Court with similar rules to VACT in that Community groups are not charged a fee.

In summary, The EPA has improved but still has some way to go. EPA must adopt a firmer stand when it comes to protecting the environment and human health. All too often EPA favours industry at the expense of the community. That is not the role of the EPA. The community must come first. There are communities that have suffered enough for the greater good and these communities must not be asked to carry any further burdens.

