

Preliminary:

Since the Environment Protection Authority (EPA) was formed in Victoria in 1971, community expectations have increased because of greater awareness of the environment in which we live.

Environmental justice, albeit better known in the community as – “Make the polluter pay, to ensure a necessary deterrent prevails”, is now broadly sought by the public at large.

The sensationalism of news media has played a big factor in this shift in community sentiment. Often the headline into a news story about a pollution event runs something like – “who is responsible and who should pay?”

For the decades ahead, a credible EPA needs to move more quickly to ensure environmental justice is seen to occur as soon as possible after the pollution incident has been notified to, or noticed by, the public.

Consequently, a review of the EPA’s role and the adequacy of the current statutory powers by the ministerial advisory committee (MAC) is timely.

My background:

With degrees in Science and Management my career has traversed both private sector and public sector businesses.

Early in my career, I worked as an Industrial chemist in the plastics industry with Hoechst and at Mobil’s PRA oil refinery in Altona.

Since 1980, I held Managing Director/CEO roles, in businesses including –

- manufacturing (Email Electronics and Beckman Instruments),
- water authorities (South East Water and Goulburn Murray Water),
- waste collection, recycling & disposal water operations (SUEZ/Sita)
- water authority plant design & construction (SUEZ/Degremont)

More recently, I have held Non-Executive Director positions with Murrumbidgee Irrigation and Western Water. Currently I am a Board member of the Melbourne Market Authority and a member of EPA’s Enforceable Undertakings Panel.

Comments below may relate directly, or indirectly, to some of my background.

Landfills:

Table 1 on Page 10 of the MAC Inquiry document shows some alarming figures relating to the ‘Past’, ‘Present’ and the ‘Future’, in regard to Landfills. These certainly warrant a comment.

Data quoted for the ‘Present’ is from 2011-2012 which seems rather dated to qualify as present. However this data for ‘Present’ shows 51 licensed landfills and 32 unlicensed landfills.

Whilst the number for unlicensed landfills is lower than in the ‘Past’, **why would the EPA allow any of these 32 landfills to operate now without a license?**

This would seem to undermine the credibility of the EPA. These 32 landfills should be either shut down or improved to the extent that they can become licensed.

Some of these 32 landfills may be owned and operated by Councils who consider themselves to be outside of EPA controls. If so, then the regulations need to be tightened such that Councils are brought fully under the control of the EPA from a licensing standpoint.

For the ‘Future’, the only comment is that 11 landfills will close by 2023 in Metropolitan Melbourne. This comment could imply there is no need for any landfills in the future, since no projection of numbers is even made. To forecast a zero need for landfills in the long term would be incorrect because even with the best intent possible with materials recycling, there will always be some residual material that can only be landfilled.

For decades, various authorities such as a Council in the ACT have spruiked the concept of “No waste to Landfill by year 2000” as a means of improving the focus on recycling. This goal of “no waste to landfill” was not reached in year 2000, or even 2015, and probably never will be because it is just too idealistic.

Recommendation 1:

The powers and scope of the EPA may need to be increased to ensure that the mechanics of enforcing landfill licensing over local government/Councils is appropriate.

Waste Water – Tertiary treated or Raw/untreated:

As the importance of water supplies become a focus for the sustainability of population growth centres, the community is often seeking greater access to treated waste water. With new development areas a third pipe can be connected to residential properties at the time of the land subdivision in a relatively cost effective manner. Such access to treated waste water can make new communities far more drought tolerant and allow for greater re-use of water within a Water Authority district.

For example, at the Eynesbury estate on the western side of Melbourne, treated waste water is piped to individual homes. Initially this treated waste water delivered via purple pipes to guard against cross-connections, was used for irrigation of domestic gardens. This water is now also being used for flushing toilets within the houses and more recently for washing clothes.

Whilst Water Authorities can implement and control such re-use programs, the EPA has a role to ensure these programs are encouraged by the careful use of licensing the storage lagoons at the water treatment plants. In particular, the EPA should provide some allowance for a Water Authority to have a temporary spill of treated water, from such lagoons, into an approved water way during a wet weather event.

This is very different to allowing a spill of untreated water into a waterway from either the sewerage infrastructure or from the treatment plant itself. Such events regularly occur, especially during wet weather, when the system becomes overloaded by the infiltration of stormwater leading to the inlet of the treatment plant.

The monitoring of inflow ratios between wet weather and dry weather can be an early pre-cursor to noting where management and operations in waste-water treatment plants need to be improved. For example, a medium size treatment plant may have been designed and built to handle a flow of 10 ML/day. With an average dry weather flow of 7 ML/day all is well. But if the wet weather inflow to the plant increases to say 40ML/day (due to infiltration of storm water) then clearly the plant will become overloaded and excess untreated sewage will be spilt.

Inadequate management practices and poor preventative regimes by the operator of the treatment plant, and the sewerage infrastructure, can contribute towards spills of untreated sewage into water ways. Such events need greater vigilance and enforcement by the EPA. The early monitoring of wet weather/dry weather flow ratios should be used by the EPA as an early warning signal to determine which treatment plants require closer supervision.

Treated Waste Water, cont.

Recommendation 2:

- a) The EPA needs to better differentiate between a spill of treated waste water from a holding lagoon into a waterway as compared to a spill of raw/untreated sewage. Whilst both spills could result from a wet weather event, the latter is the major concern from a pollution standpoint.
- b) The EPA could regularly gather data on the flow ratios of waste water treatment plants (wet to dry weather) and prioritise those plants that are most likely to cause harm to the environment due to spills of untreated sewage, and also the sensitivity of where they might spill to.

Governance of the EPA:

In recent years, the separation of the roles of Chief Executive Officer and Chairman of the EPA has occurred, and this has been long overdue.

At the time the EPA was created, Dr Brian Robinson operated in both roles concurrently. Sometimes, the late Dr Robinson would joke that he needed to go to a meeting with himself, wearing both hats, and put forward a recommended course of action on a matter and then by adjusting his hat, make the appropriate determination.

Dr Robinson was a very clever man and he ran a strongly focussed team and achieved significant results at the time. However, this form of governance did not provide him with the breadth of support and counsel provided by the more contemporary Government boards of today.

Currently, an advisory Board of 2 persons supports the Chairman but the powers and responsibilities are limited and are only of an advisory nature.

A move towards the establishment of a shareholder appointed Board of say 6 persons with appropriate background and experience and holding accountability for their actions, or inactions, would seem to best position the EPA for the long term.

Recommendation 3:

The Environment Protection Act of 1970 should be amended to provide for the appointment of a 6-member Board plus the Chairman to oversee the operations and activities of the EPA via the Chief Executive Officer.

Enforceable Undertakings:

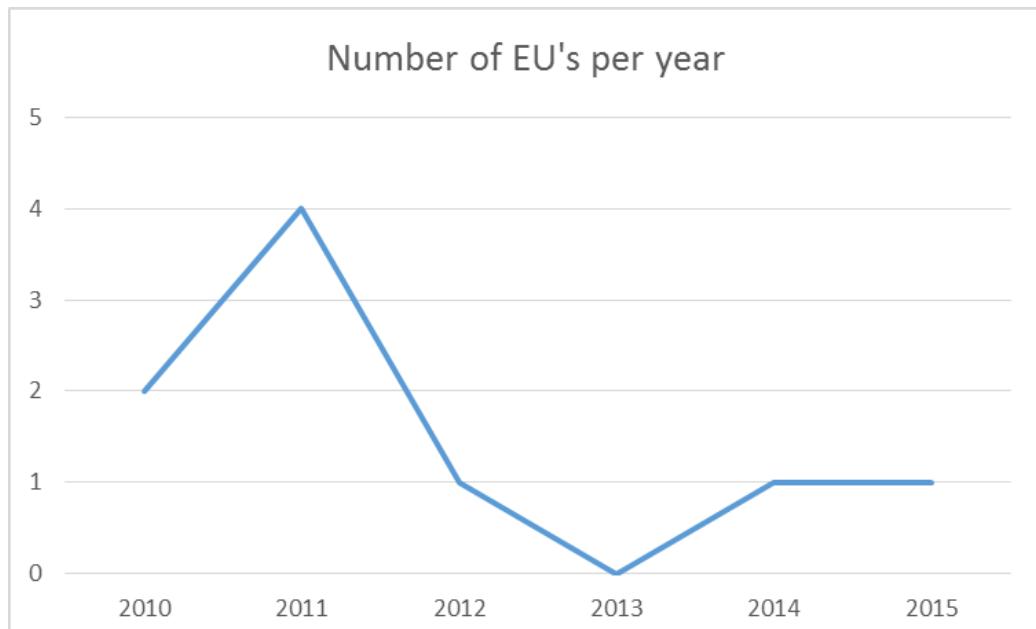
The Enforceable Undertakings (EU) guidelines, amended in May 2012, include several key objectives –

1. Drive improvement in environmental performance by fixing the problem that led to the breach
2. Innovating for improved environmental performance industry wide
3. Deliver benefit to the local community and environment

These objectives are all still very appropriate. Gaining an agreement/commitment from a “polluter” to an EU is far more preferable than running a long-term legal case that could result in a Court imposed fine.

Whilst large multi-national companies might well budget for a level of environmental fines during the year, there is the disclosure obligation to their corporate head office about the number and extent of legal cases on foot. Hence, overall a large multinational company is likely to choose the EU option so that their reporting of such risks up the corporate line can be avoided.

However, the history of completed EU's over recent years has been very low and consequently rather disappointing. The EU's completed over the last 5 years are shown in the graph below -



Enforceable Undertakings, cont.:

I was a member of the panel that reviewed the Goulburn Valley Water EU in 2014, and the proposed Hepburn Shire Council EU in 2015. In both cases the panel was allowed just 2 weeks to review the information presented by the EPA.

This was sufficient time to do the job of reviewing the background of the “pollution issue”, as well as the proposed EU plans for reparation and environmental justice.

However, in both these cases, the EPA took several years to collect information and reach the point where the panel could be presented with the material to make this judgement. Our panel report on the Hepburn Shire Council issue noted on page 1 that more than 3 years had elapsed since the pollution was first reported.

The excessive time to bring such issues to the EU panel is indicative of a systemic problem within the EPA, namely a culture of extreme caution with the gathering and sequencing of legal material to support a full on legal prosecution. Clearly this “careful culture” within the EPA’s legal team is about reducing the likelihood of an unsuccessful prosecution.

The passage of excessive time between the reporting of a pollution event and the final outcome reduces the credibility of the EPA acting on behalf of the community to achieve environmental justice.

A separate dysfunction created by the excessive time between reporting and finalising an EU is that the EU panel is often presented with effectively a fait accompli outcome at the final review point because the whole process has just taken so long. We found this very evident in the Hepburn Shire Council EU where a number of proposed undertakings showed little relevance to the original cause of the problem, or even merit. In this case, the panel suggested that the EU was lacking and needed to be re-worked. The EU panel could be engaged in the evaluation process at a much earlier stage where their combined experience can be more beneficially used.

A systemic change could be introduced by the EPA to cover how their internal investigation and prosecution stages are advanced with a view towards encouraging the timely development of an appropriate EU rather than the lengthy move towards legal prosecution and a court imposed fine.

The concept of an EU is not widely understood and many businesses would not be aware of this being an option to a prosecution and a fine. A bulletin or “flyer” could be produced as a generic approach to achieving environmental justice arising from a pollution event. This flyer could be handed to the company representative as soon as the event has been reported or investigated so as to encourage this as a desired outcome.

Enforceable Undertakings, cont.:

If a polluter is made to realise at an early stage in the investigation that an EU is a possibility, rather than fighting against a fine, then a better outcome is likely to result.

However, the EPA needs to hold the right to take a matter all the way through to a legal prosecution, if a polluter chose to use the proposed EU as a way to frustrate or delay the overall process of environmental justice being delivered.

Recommendation 4:

- a) Use promotional materials early in a pollution investigation to encourage the polluter to make a commitment to develop a EU
- b) Provide a time period of say 1 month for the polluter to produce a first draft of the EU
- c) Make it clear that an EU not completed and signed off within 6 months may revert to a full prosecution via the courts
- d) The EPA could suspend the further investigation of the pollution event for a period of 6 months with the aim of better directing their resources towards successful EU's

Recommendation 5:

The EU panel should be engaged by the EPA early in the establishment of a proposed EU to ensure the panel's expertise is better utilised.