

30 October 2015

Ms Penny Armytage
Chairperson
Ministerial Advisory Committee
Inquiry into the Environment Protection Authority
P.O. Box 21428
Little Lonsdale Street VIC 8011
(by email: info@epa-inquiry.vic.gov.au)

Dear Ms Armytage,

Re: Submission from Environmental Auditors Streamlining Processes for Declaration of a GQRUZ and Determination of CUTEP

Introduction

This submission to the Ministerial Advisory Committee (MAC) for the inquiry into the Environment Protection Authority (EPA) is made by the Environmental Auditors (Contaminated Land) listed at the end of the submission. The Environmental Auditors listed include members of the Groundwater Approvals Working Group (GAWWG), that works with EPA to improve regulatory processes relating to groundwater pollution, and a total of 51 of the Environmental Auditors (Contaminated Land) currently appointed by the EPA.

Environmental Auditors (Contaminated Land) are responsible for providing opinion and making recommendations to the EPA in relation to determination of clean up to the extent practicable (CUTEP) and declaration of groundwater quality restricted use zones (GQRUZ) as part of environmental audits under Section 53X of the Environment Protection Act, 1970.

Our submission identifies some key issues with the regulation of groundwater contamination and recommends two key initiatives that we believe will address the following questions posed in the Submission Guidance document:

4. *How can the EPA's role in safeguarding the community against the health impacts of pollution be clarified or strengthened?*
5. *How could statutory frameworks more effectively prevent future environmental risks and land use conflicts?*
7. *How can the EPA better identify and, where necessary, address problems that are the result of past activity?*
8. *What can EPA do to avoid potential future problems?*

The Issues

Notification of Groundwater Users of Groundwater Pollution

As professionals working extensively in the area of groundwater pollution, both as Environmental Auditors and in wider environmental consulting roles, we are aware that most of the largest contaminant plumes in groundwater across the state have not gone through a process of a determination of CUTEP or declaration of a GQRUZ. The limited number of groundwater plumes formally documented through a CUTEP or GQRUZ is despite the current regulatory processes being

in place for over 13 years, since EPA Publication Nos. 759, 840 and 862 were issued in 2002. As a consequence, groundwater pollution currently exists beneath many properties which were not the source of that contamination, and the most reliable mechanism for notifying owners and occupiers of those properties (i.e. a GQRUZ) has not been enacted.

Review of sites on the EPA's Priority Sites Register (PSR) can, at least in part, confirm the fact that a number of sites which are the source of large known groundwater plumes which have not gone through the CUTEP and GQRUZ processes. Clearly, the EPA is aware of the PSR sites and makes the public aware of the sites themselves. However, EPA has not consistently applied the most robust means of making off-site groundwater users aware of pollution (i.e. through a GQRUZ).

We believe the PSR sites represent only a fraction of the sites in Victoria which are sources of significant groundwater plumes extending off-site. Our opinion is based on the frequency with which background contamination is encountered coming onto audit sites from other sites and our wider consulting experience.

We understand that EPA is moving toward developing a geographic information system (GIS) layer showing the areal extent of any GQRUZ it has declared to date. We also understand that the GIS layer will shortly be accessible to parties considering installing groundwater bores via the EPA's website and other groundwater information sites (eg. Visualising Victorian Groundwater). We strongly support the EPA's initiative with regard to the GQRUZ GIS layer and believe it can provide a robust means for the regulator to fulfil its role by widely communicating where groundwater pollution may be present. However, the value of the GIS layer is seriously limited by the proportion of groundwater plumes for which a GQRUZ has been declared.

Disincentive for Responsible Parties to Address Groundwater Pollution

Current EPA practice stipulates that a GQRUZ can only be declared following a CUTEP determination, and that a CUTEP determination can only be obtained from EPA through an environmental audit under Section 53X of the Environment Protection Act 1970. As such, the only regulatory end-point for a specific groundwater issue involves assessment of all soil and groundwater contamination that may be present on an industrial site rather than focusing on the key issue affecting off-site groundwater users.

Section 53X audit procedures were specifically developed for a change in land use from an industrial activity to a "more sensitive land use" (eg. residential, child care centre, school, public open space, etc). They were not intended to assess contamination and risk on operating industrial sites and the level of assessment required is not commensurate with the risk to human health the contamination represents in an industrial setting.

A Section 53X audit requires an Environmental Auditor to complete a "total assessment" of all soil and groundwater contamination issues at a property, for which he or she must issue a Certificate or Statement of Environmental Audit. As intended, a Certificate or Statement of Environmental Audit would normally relate to more sensitive uses and ongoing ownership by parties with limited knowledge and experience of managing soil and groundwater contamination (eg. home owners). Industrial corporations are recognised under the policy framework to have a greater capacity and robust systems to manage onsite soil and groundwater contamination in the context of their normal operations. However, notification of potential off-site groundwater users is more challenging for industrial corporations and, we believe, is best achieved by EPA using a GQRUZ.

Frequently, EPA only becomes aware of significant groundwater pollution issues when an industrial site is sold and the developer is taking a site through a Section 53X environmental audit process as part of the redevelopment of the site for a more sensitive use. Typically, property developers are required to borrow funds to purchase and redevelop sites and are under enormous financial pressures to go through that process as quickly as possible. Lack of time creates significant pressures to rush assessment of plume extent, confirm plume stability and ensure appropriate remediation has been completed. It is not uncommon for the time required to complete CUTEP and GQRUZ processes to place developers under severe financial strain.

Any initiative which incentivised or assisted the original polluter to commence mitigating groundwater pollution earlier would inevitably result in more equitable and reliable outcome. Industrial site operators undertaking groundwater clean up rather than property developers also allows much more cost effective and sustainable clean up strategies (eg. bioremediation) to be implemented on the basis that more time is available.

Recommendations

We recommend that the following amendments to EPA's current administration of groundwater pollution:

1. EPA change their internal procedures to allow CUTEP determinations and declaration of a GQRUZ to be processed under a Section 53V audit process.
2. EPA change their internal procedures to allow for a GQRUZ to be declared once EPA is aware of pollution, consistent with EPA Publication 862.

A Section 53V audit allows an audit scope to be agreed which can focus on contamination associated with a specific activity of specific segments of the environment. Section 53V audits would allow industrial site owners and operators to commit to address specific contamination issues and not require a "total assessment" of all contamination at a site.

Existing guidance for Environmental Auditors on determination of CUTEP and declaration of GQRUZ can be used to continue to provide rigour and meet EPA expectations in relation to these processes. Standardised Section 53V audit scopes sufficient to support determination of CUTEP and declaration of a GQRUZ could be easily developed.

Our understanding is that EPA can declare a GQRUZ, based on reasonable assessment of the extent and stability of groundwater plumes, prior to CUTEP being declared. The primary reason it has not been occurring to date is that there is no internal process defined by EPA to consistently consider declaration of a GQRUZ. It is not uncommon for full implementation of clean up strategies to take several years to decades. A GQRUZ could be in place while sustainable and cost effective remediation strategies are developed and implemented, allowing polluter and regulator to fulfil their duty of care to potential groundwater users.

We understand that requirements for mandatory reporting of pollution is being considered as a possible legislative or regulatory reform as part of the overall review of EPA's function. If mandatory reporting became a requirement, it is likely that EPA will receive a large number of notifications of groundwater pollution. The recommendations we are proposing would provide a much more efficient and reliable means than Section 53X audits for EPA to process these notifications and make potential groundwater users aware of the extent of pollution.

Requirements

Auditors in the GWAWG have completed a scoping study and conducted a workshop around these issues involving all Environmental Auditors at the annual Auditors Conference in June 2015.

There are no legislative impediments to making the recommended changes. Few changes would be required to existing guidance documents, and limited additional guidance would need to be generated.

Our understanding of the requirements is that two to three EPA staff would need to be allocated to the task on a part time basis. With ongoing support from the GWAWG, we believe the amendments could be achieved relatively quickly, in three to six months.

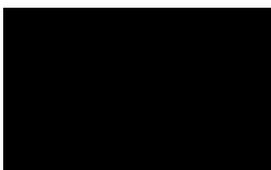
The GWAWG understands that reform in relation to CUTEP and GQRUZ areas is not currently identified as a priority by EPA. We recommend that EPA allocate the resources to these tasks as a matter of priority.

Closure

Members of the GAWWG would be pleased to meet with the MAC to expand on our thoughts regarding these recommendations and how they may be achieved.

If you have any comments or questions, please do not hesitate to contact the undersigned at patrick.clarke@senversa.com.au or david_lam@coffey.com.

Yours sincerely,



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Prepared on behalf of the following Environmental Auditors (Contaminated Land):

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