

Anonymous, 3016

Dear Penny Armytage,

Please find below submission regarding the EPA. Specifically this submission adds to the private individual submission I made on 29 October, where I failed include issues around how EPA is managing Prescribed Industrial Waste (PIW), especially Contaminated Soil.

Currently the EPA IWRG publication suite of documents defines how wastes are to be categorised, treated, transported and if necessary disposed. EPA has been pushing for some years to reduce landfilling of wastes where there may be opportunities to recycle, treat and recover resources from waste materials. Commonly in the development sector waste soil are generated as part of basement excavations and there is limited opportunities to avoid this waste. In metropolitan Melbourne, urban infill development is generating a lot of contaminated soil from former industrial activities that have polluted land, and that unless the soil is treated to "Fill Material" it must be either treated off-site or disposed of to licensed landfill. EPA applies a landfill levy to encourage reductions in wastes and to encourage treatment of waste soils. This can result in soil be disposed off-site for as high as \$1100/tonne. There is an emerging market for the off-site treatment of soils in EPA licensed facilities. However, market forces being what they has resulted in the interstate transport of waste soils all the way to Queensland where no levy applies and disposal is cheap (similar soils can be disposed of for <\$400/tonne, including the transport cost). This is undermining the treatment sector in Victoria and lessening EPAs impact in achieving policy objectives. The Age newspaper for example on Friday posted notice of RENEX (a soil treatment facility) going into liquidation. This may be linked to the market forces described herein. EPA appears powerless to halt this as an argument has been put forward that prohibiting this transport is a restriction of trade (or some other Constitutional argument). Further to this issue there are also a number of 'hired guns' site assessment consultants who are manipulating the waste categorisation system process to achieve lower waste categorisations therefore reducing disposal costs. Some of these operators team up with waste transport companies, further undermining the waste sector. A review of EPA's levy receipts will confirm the reduction in wastes to landfill, in particular Category B and A contaminated soils.

I request that the Inquiry consider detailed examination of the EPA's statutory tools to review how PIW is assessed and managed such that a better socio-environmental outcome can be achieved.

[REDACTED]

Regards

[REDACTED]

Williamstown 3016

What do you think are the key environmental challenges which will impact the EPA in the future?

Dealing with legacy contaminated sites as Urban infill development proceeds. Significant contaminated sites exist within the older parts of Melbourne and EPA is not well placed to influence Council or the Development industry to adequately manage these issues. EPA needs to assert its regulatory functions around big polluter industries and diffuse land degradation issues. It is not clear that EPA can influence land use practices to minimise degradation of the built and rural environments. EPA needs to become more nimble to be able to face future challenges. This requires developing more proactive measures such that it can operate less reactively. For legacy site contamination issues in particular, the EPA often appears on the scene late. For example the closure of significant industrial sites (e.g. Point Henry Smelter) and EPA's subsequent service of a clean up notice requiring site rehabilitation plans, post closure - could be seen as being too late in ensuring that the polluter has made adequate allowances over the life of the operation to deal with such issues. Now whilst EPA can require financial assurance for some particular industrial activities, it does not apply to many industries and can often be significantly less than what is required to address clean up. Finally, a key challenge for EPA is to encourage pollution prevention, rather than pollution management after the fact. For example under the State environment protection policy (Groundwater of Victoria) policy there is a requirement for polluters to remove non-aqueous phase liquid (e.g. floating petrol on the water table) unless it poses no unacceptable risk. There is a move afoot by industry to see this requirement removed from policy (this policy is presently under review) as often risks can be low based on the hydrogeological setting. However, this move should be strongly rejected until industry can demonstrate that it is taking all practicable measures to prevent the release of chemicals in the first place. Historically industry does not have a good house keeping record. Without such mechanisms as currently exist there would be no environmental clean up works completed by a large sector of industry across Victoria.

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

The environmental audit system developed in response to the inappropriate rezone of industrial contaminated land to low density residential uses at Ardeer is one of the single greatest systems administered by the EPA. This should continue. However, for the system to be maintained and relied upon without question, EPA needs to be more engaged with Environmental Auditors to share information and decision-making such that all auditor benefit. Further, EPA acts as a significant community voice in seeking environmental improvement and this role of 'carrot and stick', that is incentives and punitive measures should continue.

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

This is very difficult as in many cases not all arms of Government work to the same priorities. For example the Port Fairy beach landfill issue raised in the discussion group is an example where the local council and DEWLP manage coastal land that was historically landfilled, but EPA is not holding these parties to account, in part it is suspected because it is very costly and difficult to put on rate or tax payers to address the issue. However, if the issue was caused by a large multinational private company, EPA would vigorously pursue clean up to the highest standards. In other examples where EPA is working with DHHS it is difficult

to ascertain who takes the lead responsibility for communicating public health messages. DHHS is generally very reluctant to get involved with site contamination/'pollution' issues. However, the EPA is not the best equipped to deliver public health messages and can approach it in a manner that can raise more concerns in a community setting. With these two examples, it is clear that a hierarchy of responsibility and a partnership approach is required. However, it must go further as unless there is clear accountability then there will always be ways that other agencies try to wiggle out of responsibility. This is the kind of problem that develops with issues like the Hazelwood Mine fire. It is clear from that that no one agency took overall responsibility and the public suffered as a result.

How can the EPA's role in safeguarding the community against the health impacts of pollution be clarified or strengthened?

The NSW approach of separating legacy contaminated site related matters from operational/existing potentially polluting activities is a good way of clarifying such matters. However, the link to the planning system must remain central to this (i.e. the Planning & Environment Act) as often the legacy issues only surface when a site is redeveloped. The subordinated legislation to the EP Act (e.g. scheduled premises and exemptions regulations) could be strengthened to include more regulated activities. For example, service station site and many industrial sites that generate solid or liquid wastes are unregulated. Now whilst these sites may only represent small sources of impact and therefore not on first pass be considered to warrant regulation, on an industry scale they are significant polluters. EPA needs better mechanisms to notify the general public about contaminated land and groundwater impacts and tracking. For example, this includes the identification of GQRUZ's in the manner originally intended by EPA - that is to identify the large groundwater pollution zones around Victoria which everyone knows about in the consulting industry - rather than how they have been identified which is on a case by case basis under the environmental audit system process only. The environmental audit overlay and requirements under the Ministerial Direction NO.1 of the P&E Act should be reviewed or modified. The planning advisory committee under the previous government failed to clearly articulate to Government the need for change.

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

EPA has a good tool bag of options to prevent pollution and require clean up. However, there are no tools like the WA and NSW states where voluntary agreements can be entered into. There is no recording on title of the completion of environmental audit of a site and there is no practical means of enforcing Statement of Environmental Audit conditions (s.173 agreements aside). As discussed in another response, there is some merit in considering two pieces of legislation, one to manage legacy land contamination and the other to manage current operations. Land use conflicts arise typically where there is insufficient buffer or incompatible land uses. There are numerous examples, such as Mobil Altona Refinery where since its commencement in the 1950's their buffer land has been eroded by local government (and VCAT!) decision making to allow residential land uses to co-exist. Landfilling in the Clayton former sandmining area has proceeded unabated in part as a result of poor Work Authority requirements by the extractive industry regulator not adequately considering alternative rehabilitation than landfilling when granting an authority. Broiler sheds on the Mornington Peninsula have been a long term issue as these once farming areas become gentrified. EPA's residual buffer guidelines are dated and not considered in VCAT when expert witnesses for proponents get involved. Further, EPA has not implemented key sections

of State environment protection policy which could go some way of minimise land use conflict. For example under the Groundwater of Victoria policy EPA can declare groundwater protection zones which would provide an effective means of requiring Councils to consider higher environment protection standards in sensitive areas. An example could be the Hepburn-Daylesford Mineral Spring area which is a significant resource. Imagine a pollution event rendering this resource sterilised and the resultant loss of economic benefit this region provides. In close, this is an issue that requires a whole of government response and in particular, DEWLP (planning element) needs to listen to EPA when advised on buffer requirements when considering significant land use changes.

What role should the EPA play in emergency management?

Only as relates to environmental control measures and directions around minimum requirements to make the environment safe.

How can the EPA better identify and, where necessary, address problems that are the result of past activity?

Historical activities have resulted in a significant number of legacy contaminated sites. EPA has no formal mandatory reporting requirement for site owners or occupiers to report site contamination that represents a 'significant risk of harm to human health or the environment'. I believe all other States and Territories have some form of mandatory reporting. This means that there is no real way of EPA identifying past problems and therefore, unless the audit system is activated through a land use change to a 'sensitive' use, EPA is not aware of sites that may present significant risks. Mandatory reporting would pick up sites that are not currently regulated by the EPA, but may pick up high risk sites that may be able to be rectified whilst the polluter or site occupier is available. Further, where EPA does identify a significant site - usually identified in a reactive manner around adverse publicity through the contamination being encountered during site works unrelated to addressing contamination - then EPA has limited tools to require action where no polluter or occupier with sufficient funds can clean up the site. In the USA for example, a levy system is applied to all chemical manufacturing such that EPA can fund clean up of orphaned sites through what is known as the 'Superfund' program. Whilst in Victoria, the Hazardous Waste Fund can be used to fund some small scale works, it is insufficient to deal with the backlog of problem sites. Therefore, in combination with the polluter pays principle, there needs to be a mechanism to identify and fund site clean up for significant risk sites.

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

This is an ambiguous question. The EP Act currently defined 'beneficial uses' which include the environment as well as human health. The EPA currently works with other departments and government agencies to monitor for example inland waterway health and has developed strong policy (SEPP Waters of Victoria) to require more actions by the likes of DEWLP.

What role should the EPA play in reducing greenhouse gas emissions?

Limited role. The EPA has historically been the regulatory of pollution point sources (i.e. factory emissions of toxicants to air) and has been less successful with reducing green house gas emissions from vehicles.

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

Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. - EPA is currently conflicted in this area as it treats large multinationals quite differently to Councils and mom and dad polluters. This needs to be reviewed. A levy or other funding model could be established to deal with orphaned sites.

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?

Mandatory reporting of site contamination (e.g. WA, NSW). Consider separating pollution prevention (i.e. better regulating current industrial operations) from pollution management (i.e. legacy contamination clean up). This is a clear flaw in the current EP Act.

Are there any other issues relevant to the Terms of Reference that you would like to raise?

Nil.

What can the EPA do to avoid potential future problems?

EPA needs to become more nimble in addressing emerging issues. EPA needs to be more transparent with all stakeholders to clearly outline its requirements. By separating pollution prevention from legacy pollution management by reporting on contamination and gathering a larger pool of industry types with the potential to create significant health effects then EPA, with sufficient resourcing should be able to perform as a modern regulator.