

DETAILED SUBMISSION

Ileowl Pty Ltd (**Ileowl**) trading as Greenchip Recycling operates an industrial facility on land forming part of the 'buffer' area of the Baranduda Wastewater Management Facility south east of Wodonga and supplies an important waste management service to North East Victoria.

The industrial facility includes:

- liquid prescribed industrial waste storage and treatment
- an organic waste recycling and product manufacturing process (dewatering, composting, organic product blending and screening)
- retail product supply and sales (part of site fronting Whytes Road)

The organic waste recycling and product manufacturing process, includes the receipt of organic waste, in both solid, semi-solid and liquid form, shredding of hard organic waste, dewatering of liquid organic waste (liquid waste discharged as trade waste), composting of the shredded hard organic waste, soft organic waste and dewatered organic sludge and sale of the compost products as is, or screening of the compost into various grades (size) for sale, or blending with imported, silts / sands again for sale (i.e. topsoil equivalent). Dewatered organic sludge is suitable for direct land application together with the range of organic products for the purpose of soil improvement and fertiliser.

The products produced may be varied to meet an agricultural, commercial or domestic customer's specification, including provision in loose bulk form or bagged product.

Ileowl operates under a licence issued by the Environment Protection Authority (**EPA**) under the *Environment Protection Act 1970 (EP Act)*.

Ileowl's interaction with EPA includes:

- reporting (i.e. annual performance statements)
- requesting consignment authorisation for interstate transport of controlled waste (in or out of New South Wales ~ 5km)
- waste transport certificates (receiver, transporter and producer) within Victoria (daily basis)
- applying for approvals (works approval, research demonstration and development approval, commissioning approval 30A, licence amendment and exemptions) to upgrade infrastructure at the facility and to alter the wastes received and the treatment methods
- responding to investigations for sanction focused enforcement related to odour impacting residents
- direct land application of products produced from the treatment of organic wastes
- community consultation together with the Wodonga Rural City Council
- industry consultation for the development of policy and guidelines (including through the Victorian Waste Management Association and Compost Victoria/AORA Australia)
- responding to EPA media releases and interviews to local print media and radio

Ileowl makes this submission with the objective of improving the regulation of the waste sector leading to better outcomes for regional Victoria (more jobs, industry investment, government facilitating innovation at all scales).

Terry Corrigan, the owner of Ileowl has worked and invested in the Victorian waste industry for 3 decades and for that entire time he has interacted with the EPA in some forum. EPA has changed significantly in this time as have the challenges to the waste industry and the Victorian community.

More recently (last 5 years) his interaction with the EPA has frustrated, delayed and stalled voluntary capital investment in infrastructure upgrades to the facility designed to reduce the risk of odour emissions impacting on nearby residents. Since 2012 Ileowl has been in proceedings before the Victorian Civil and Administrative Tribunal (**VCAT**) in an adversarial interaction with the EPA, the Wodonga Rural City Council (Council) or both.



SCOPE OF INQUIRY

The core objective of the 'Inquiry into the Environment Protection Authority' (**Inquiry**) identified in the 'Terms of Reference' (**Terms**) is to protect the health of Victorians.

The Terms identify that the risk to health of Victorian's arises from pollution of the environment (land, waters and atmosphere) and from industrial waste, specifically asbestos.

Ileowl's comments are provided below in response to the Terms having regard to the broad directions to the Inquiry to consider:

- regulatory efficiency; reducing regulatory burden; employment growth; integration of economic, social and environmental considerations
- consultation of the community, industry, workers, local government and state government

- 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;***

Issue	Ileowl Comment
Role in public health – water pollution	<p>EPA has an important role to fulfil in protection of public health from water pollution.</p> <p>Scheduled premises licensed by EPA each include conditions prohibiting the discharge of waste to groundwater and surface waters. The waste industry has committed significant investment in infrastructure, technology and processes to contain and treat wastes, including liquid wastes, which prevents the pollution of surface water and ground water.</p> <p>Ileowl would encourage any initiative whether it is EPA led and implemented, or rolled out through other State Government or Local Government entities that compels land owners and occupiers to clean up and remove waste polluting waters (surface water and groundwater) in Victoria.</p> <p>Licensed A01 – PIW Management premises are established to treat and handle prescribed industrial waste and can make a significant contribution to any initiative.</p> <p><u>OPPORTUNITY:</u></p> <p><u>EPA to continue with role in regulating scheduled premises through licences.</u></p> <p><u>EPA, State Government and Local Government to develop and promote initiatives requiring clean up and removal of sources of surface water and groundwater pollution.</u></p>
Role in public health – land pollution	<p>As for water pollution, EPA has an important role to fulfil in protection of public health from land pollution.</p> <p>Licensed premises are appropriately regulated to prevent land contamination.</p> <p>There is a significant opportunity for the initiatives utilising the EP Act to target the clean up and remediation of land pollution. Again licensed A01 – PIW Management premises can make an important and significant contribution.</p> <p>Careful consideration will be required of the regulatory intervention in the land application of organic products as distinct from organic wastes. Segregation and diversion of organic waste from landfill drive this environmental risk.</p> <p><u>OPPORTUNITY:</u></p>

Issue	Ileowl Comment
	<p><u>EPA to continue with role in regulating scheduled premises through licences.</u></p> <p><u>Careful consideration of regulatory intervention in land application organic products as distinct from organic waste.</u></p> <p><u>EPA, State Government and Local Government to develop and promote initiatives requiring clean up and removal of sources of land pollution.</u></p>
Role in public health – air pollution	<p>Odour emissions from Ileowl’s premises is a significant environmental aspect with a direct interface with the local community. Odour emissions may impact on the amenity enjoyed by the community.</p> <p>The control and treatment of odour emissions from Ileowl’s premises is a function of siting, infrastructure design and operational practices. Capital and operation costs increase significantly with increased odour control.</p> <p>More recently the EPA has identified residential encroachment on waste management premises as a priority and has been actively participating in and supporting initiatives to protect waste management premises. This is important for Ileowl as it was sited to locate adjacent to the Baranduda Wastewater Management Facility operated by the North East Region Water Corporation – Ileowl’s landlord. Ileowl encourages the EPA to offer support to any initiative by North East Water to introduce planning controls for the Baranduda Wastewater Management Facility as it did for the Planning Panel for the Benalla Waste Water Management Facility.²</p> <p>EPA needs to balance protection of waste management premises from encroachment with sanction focused enforcement against waste management premises relating to amenity impacts from odour emissions.</p> <p>Licence condition LI_A1 requires no odour offensive to the sense of human being beyond the boundary of the premises. This condition must be amended to be consistent with the statutory defence at s 30 of the Act, where a licence holder is not liable for breach of licence for an emission of odour offensive to the senses of human beings unless it is detected in a residential area or public open space adjacent to a residential area.</p> <p>A substantive body of expert evidence and VCAT decisions has accumulated identifying the criteria of 1 odour unit at the boundary of the premises (State Environment Protection Policy (Air Quality Management)) as unrealistic and too conservative.</p> <p>Remedial notices imposing capital works and operational costs need to be considered in context of a waste company’s financial</p>

² Amendment C31 Benalla Wastewater Treatment Plant [2015] PPV
SHF 4631353v3 SHF

Issue	Ileowl Comment
	<p>capability and the balance between amenity protection and facility protection.</p> <p>In 2012 upset conditions caused by adverse meteorological conditions (i.e. flooding) initiated a sequence of events resulting in odour emissions from the premises impacting on residents in Killara. EPA's response despite executive level representation to the contrary was to initiate sanction focused enforcement and to require the voluntary investment in infrastructure upgrades to mitigate odour emissions from the premises to proceed by an application for works approval.</p> <p>EPA issued a remedial notice imposing requirements focused on reducing waste received and stored at the premises, which would have effectively closed Ileowl's business. On review before VCAT the EPA agreed to allow Ileowl to build and construct infrastructure under the remedial notice.³ EPA vigorously resisted this approach and the delay associated with the proceeding (18 months) prevented Ileowl from implementing permanent engineering solutions to control odour emissions exposing it to the continual threat of sanction focused enforcement by the EPA and the Council. The remedial notice issued at the direction of the VCAT allowed the buildings and works without a planning permit.⁴</p> <p>Ultimately, the significant capital investment in infrastructure resolved the odour emissions and the premises is now rated by the EPA as a low priority licensed premises (Licensed Operator Risk Assessment - EPA inspection frequency annually).</p> <p><u>OPPORTUNITY</u></p> <p><u>EPA to continue its support of initiatives to protect waste management facilities from encroachment by sensitive land uses.</u></p> <p><u>EPA to amend licence condition LI A1 to be consistent with the statutory defence at section 30 of the EP Act.</u></p> <p><u>EPA to amend the ground level concentration for general odour prescribed in the Statement Environment Protection Policy (Air Quality Management) from 1 odour unit at the boundary to a level representative of causing an impact on the reasonable amenity of the community (i.e. 10 odour units or higher).</u></p> <p><u>EPA to facilitate and expedite voluntary initiatives to improve the environmental outcome of a scheduled premises by requiring works by remedial notice.</u></p>
Role in public health – asbestos exposure	<p>No comment.</p> <p><u>OPPORTUNITY</u></p>

³ *Ileowl Pty Ltd v Environment Protection Authority* [2013] VCAT 1562

⁴ Clause 62.02 of the Victorian Planning Provisions.

Issue	Ileowl Comment
Role in public health – chemical exposure	No comment. <u>OPPORTUNITY</u>

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

Issue	Ileowl Comment
Scope of regulation	<p>At its core the EP Act is intended to regulate discharges of waste to the environment (including landfill) and the management of prescribed industrial waste management.</p> <p>Any regulatory reform must foster innovation by industry, protect industry investment through certainty of requirements and facilitate preferential investment where an improved environmental outcome is delivered.</p> <p><u>Works approvals</u></p> <p>Subordinate legislation then identifies scheduled premises for works approval and licensing.</p> <p>The Victorian Competition and Efficiency Commission (VCEC) made extensive recommendations⁵ concerning the works approval process and licensing of scheduled premises. VCEC's recommendations called for an amendment to the EP Act and <i>Environment Protection (Scheduled Premises and Exemptions) Regulations 2007</i>.</p> <p>In relation to works approvals the VCEC recommendations, included:</p> <ul style="list-style-type: none"> • confining the triggers for works approval⁶

⁵ 'A Sustainable Future for Victoria: Getting Environmental Regulation Right' (July 2009) Victorian Competition and Efficiency Commission – Chapter 7.

⁶ Recommendation 7.1

Issue	Ileowl Comment
	<ul style="list-style-type: none"> • exempting specified technology from works approval⁷ • reducing the statutory time for EPA to determine an application for works approval⁸ <p>These recommendations have not been implemented. Consistent with the VCEC's recommendations the EPA has sought to address these recommendations by interim measures such as guidance documents and an 'approval pathway process'.</p> <p>The interim measures have no legal standing and in many instances are actually delaying the statutory decision process (e.g. the Approvals Pathway Form delays the lodgement of an application and the commencement of the statutory time period).</p> <p>VCEC recommended removal of the statutory requirement for a works approval for a premises upgrade where the where the same or less environmental harm will result.⁹</p> <p>Following the upgrade to the premises required by remedial notice issued at the direction of the VC AT (refer to air pollution comments above) Ileowl has sought and obtained planning permission, again issued at the direction of the VCAT, for a buildings and works to handle compost product that will result in an overall net reduction in odour emissions from the premises. The EPA has again vigorously pursued an application for a works approval from Ileowl from the proposal.¹⁰</p> <p>On invitation from the EPA's legal office¹¹ Ileowl applied for a declaration pursuant to s 36D of the EP Act. On filing the application the EPA contested the VCAT's jurisdiction to determine the application, which was ultimately upheld.¹² [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>If VCEC's recommendation 7.1 had been implemented then this dispute would not arise. The proposed building and works forms part of the same proposal Ileowl put forward in 2012 as a voluntary capital and operational investment in infrastructure at the premises that will reduce odour emissions from the premises.</p>

⁷ Recommendation 7.2

⁸ Recommendation 7.3

⁹ Recommendation 7.1

¹⁰ *Ileowl Pty Ltd v Wodonga City Council* [2015] VCAT 359

¹¹ Email of 24 April 2015 (from [REDACTED] sent at 2:34pm)

¹² *Ileowl Pty Ltd v Environment Protection Authority (Includes Summary) (Red Dot)* [2015] VCAT 1105

¹³ [REDACTED]

Issue	Ileowl Comment
	<p>boundary no approval is required – s 19A(1).</p> <p>Ileowl and Russell Kennedy raised these matters in written submissions to the EPA during consultation on the classification. These matters are not disclosed on the EPA website summarising issues arising from submissions.</p> <p>These matters have not been addressed.</p> <p>This is raised as an example of an EPA decision that undermines industry confidence to invest infrastructure and technology creating employment, disadvantages licence premises and ultimately increases the risk to the environment and the community through water pollution.</p> <p><u>OPPORTUNITY</u></p> <p><u>Amend the EP Act and regulations to implement the VCEC’s recommendations.</u></p> <p><u>EP Act to be amended to remove the requirement for approval, which does not apply to non-scheduled premises handling industrial waste – by EPA issued classifications (s 19A and licence fees).</u></p>
Function of regulator	<p>The regulatory and enforcement functions under the EP Act must be separated and performed by different State Government entities.</p> <p>These distinct functions are compromised, particularly in regional areas, where the same EPA officers are responsible for both functions or at least involved in them.</p> <p>Effective and targeted enforcement is critical to uphold the legislative framework and create certainty for industry to invest and compete fairly in the marketplace. EPA’s enforcement is failing by targeting generally compliant industry, local government and water corporations rather than recalcitrant offenders that obtain a financial or competitive advantage by offending.</p> <p>Victoria Police should be delegated to enforce the indictable offences under the EP Act. EPA has failed to deliver prosecutions outcomes for a number of years. Significant offences are being committed, particularly in relation to dumping or abandoning industrial waste, which ultimately undermines legitimate industry.</p> <p>The regulatory function under the EP Act should be administered by State Government or EPA with closer links to State Government departments able to facilitate investment, grants and other available initiatives directed towards improving</p>

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	<p>environmental performance, creating employment and investment in infrastructure. This is critical for regional Victoria.</p> <p>For example, Ileowl sought intervention and oversight from Business Victoria following the upset conditions in 2012. The intention was to facilitate voluntary capital and operational investment by Ileowl in infrastructure at the premises to reduce the risk of odour emission. If the regulatory function of EPA was part of a State Government Department removed from the function of enforcing the EP Act an expedient and successful outcome could have been achieved cooperatively.</p> <p>The regulatory function under the EP Act will continue involve guarded and limited interaction from industry where the same State Government entity is also responsible for enforcement and that enforcement continues to target legitimate industry, local government and water corporations rather than recalcitrant offenders deriving a financial benefit from offending.</p> <p><u>OPPORTUNITY</u></p> <p><u>Separate the regulatory and enforcement functions under the EP Act to leverage of State Government entities properly trained and resourced to discharge functions (i.e. Victoria Police for enforcement) and to facilitate access to State Government programs and initiatives to improve environmental performance, creation of employment and industry investment.</u></p> <p><u>Amend the EP Act to expressly require the EPA or the VCAT, on review to expressly consider the net community benefit, social, economic and environmental impact of a decision.</u></p>
Performance of regulator	<p>EPA's sanction focused enforcement dominates its performance causing it to be an ineffective regulator that fails to protect the environment.</p> <p>EPA continues to target generally compliant industry, local government and water corporations for minimal environmental gain.</p> <p>EPA's sanction focused enforcement has resulted in EPA conduct undermining industry confidence to invest.</p> <p>For example EPA's Director Regional Services wrote to Ileowl's landlord, North East Region Water Corporation (addressed to the</p>

Issue	Ileowl Comment
	<p>Managing Director), alleging Ileowl contaminated land and groundwater and discharged offensive odour impacting on the community.¹⁶ The letter encourages North East Water to investigate if Ileowl has caused it any long term liability. EPA failed to disclose the correspondence to Ileowl despite ongoing interaction.</p> <p>Environmental audits commissioned by Ileowl confirm that its operations have not impacted the land or groundwater environment.</p> <p>Ileowl became aware of the EPA correspondence when it was passed on by North East Water.</p> <p>This conduct does not facilitate or encourage industry investment, which is necessary if the State Government’s resource recovery targets are to be achieved.</p> <p>Consistency of requirements and consultation on the introduction of any changes is critical to the performance as an effective regulator of the EP Act.</p> <p>In most instances EPA actively consults industry as it did with Ileowl when reforming its licence. Ileowl made valuable contributions to EPA’s licensing reform program. Ultimately, this was settled before the VCAT and many of the outcomes changed EPA’s standard licence conditions and guidance. This process was effective.</p> <p>By way of comparison on Christmas Eve 2013 the EPA amended Ileowl’s licence without prior consultation in reliance on the ‘slip rule’ power where there is no right of merits review to the VCAT. Ileowl was compelled to file proceedings in the Supreme Court of Victoria seeking judicial review of the EPA decision under the <i>Administrative Law Act 1978</i>. By order of 23 January 2014 Associate Justice Mukhtar ordered that the EPA show cause why its decision to amend Ileowl’s licence should not be reviewed by the Supreme Court.¹⁷ The matter settled and the EPA withdrew the Notice of Amendment of Licence issued on Christmas Eve.</p> <p><u>OPPORTUNITY</u></p> <p><u>Vary performance criteria from sanction focused enforcement to verifiable offences rates, industry investment, employment creation and economic, social and environmental impact.</u></p>

¹⁶ Letter of 24 May 2012 (Matt Vincent, Director Regional Services)

¹⁷ *Ileowl Pty Ltd v Environment Protection Authority* (S CI 2014 269) – order of 23 January 2014

Issue	Ileowl Comment
	<p><u>Report on EPA’s facilitation of industry investment through referral or introduction of industry to Federal, State or Local Government programs and initiatives.</u></p> <p><u>Reform EPA’s internal procedures to refrain from interfering with a third parties independent relationships (e.g. landlord or customers).</u></p>
Outcome of regulation	<p>Regulation and enforcement of the EP Act should be focused on delivering an environmental outcome and a net community benefit.</p> <p>There is already a requirement to administer the EP Act in consideration of the environment protection principles, which includes the ‘principle of integration of economic, social and environmental considerations’.</p> <p>“1B Principle of integration of economic, social and environmental considerations</p> <ol style="list-style-type: none"> (1) Sound environmental practices and procedures should be adopted as a basis for ecologically sustainable development for the benefit of all human beings and the environment. (2) This requires the effective integration of economic, social and environmental considerations in decision making processes with the need to improve community well-being and the benefit of future generations. (3) The measures adopted should be cost-effective and in proportion to the significance of the environmental problems being addressed.” <p>EPA’s current regulation and sanction focused enforcement fails to properly consider this principle and results in a net community detriment.</p> <p>Victorian industry would be assisted by a facilitative interaction with the EPA, which seeks to foster innovation and encourage investment.</p> <p>Ileowl’s interaction with the EPA and the Council to upgrade its facility since 2012 is a stark example of the current arrangements failure.</p>

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	<p><u>OPPORTUNITY</u></p> <p><u>Amend the EP Act to expressly require the EPA or the VCAT, on review to expressly consider the net community benefit, social, economic and environmental impact of a decision.</u></p>

3) *the EPA’s appropriate role in protecting the environment;*

Issue	Ileowl Comment
	Please refer to comments throughout this submission.

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;*

Issue	Ileowl Comment
Environmental justice	The Terms identify the criteria of adherence to the ‘Principle of Environmental Justice’ (Principle). The Principle is not defined in Australian legislation. In 1993 the United States government established a federal advisory committee; the ‘National

Issue	Ileowl Comment
	<p>Environmental Justice Advisory Committee’ to provide advice and recommendations across government on broad environmental issues. The United States Environment Protection Agency (US EPA) defines the Principle to mean:</p> <p style="padding-left: 40px;">“Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color (sic), national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA has this goal for all communities and persons across this Nation. It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work. (US EPA)</p> <p>Internationally, the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters 1998 (Int) (Aarhus Convention) creates duties to pursue environmental justice and create structures for its promotion and protection in recognition of the link between environmental inequalities and poverty. Australia is not a signatory to the Aarhus Convention.</p> <p>Australia is a signatory to the Rio Declaration on Environment and Development 1992 (Int) (Rio Declaration), which establishes principles including:</p> <p style="padding-left: 40px;">“Principle 10</p> <p style="padding-left: 40px;">Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”</p> <p>This principle has been reaffirmed in subsequent conferences and adopted in the implementation plan – Agenda 21.</p> <p>In Australia there has been limited judicial authority considering the Principle and its application in Australia. In <i>Tweed Business and Residents Focus Group Inc v Northern Region Joint Regional Planning Panel</i> [2012] NSWLEC 166 at [11] Biscoe held that “[t]he real test of Rio Principle 10’s significance lies in domestic law rather than international law.”. Justice Biscoe then considered the objects of the <i>Environmental Planning and Assessment Act 1979 (NSW)</i> in that context.</p>

Issue	Ileowl Comment
	<p>Please see the commentary below. Restrictions in the EP Act prevent the achievement of environmental justice in Victoria – community participation in decision making.</p> <p>The legislation establishing Sustainability Victoria (SV) enacts aspects of the Principle. It should be noted that the statutory functions of SV and the EPA are fundamentally different. In any event, too many statutory decisions under the EP Act are not reviewable on the merits (e.g. exemptions and minor works pollution abatement notices). Further the provision to seek a declaration is significantly constrained to circumstances where there is a reviewable decision. This effectively prevents proactive intervention prior to an EPA decision, which would reduce costs and demand on resources.</p> <p><u>OPPORTUNITY</u></p> <p><u>Amend the EP Act to:</u></p> <ul style="list-style-type: none"> • <u>allow duty holders to apply to the Tribunal for merits review of all EPA decisions;</u> • <u>allow community participation in merits review of all EPA decisions</u> • <u>allow a declaration of any matter of interpretation and application of the EP Act, Policies, EPA Guidelines (referenced in a Policy) or instrument issued under the EP Act such as a licence (ss 149A and 149B(1)(b) of the <i>Planning and Environment Act 1987</i>)</u>
Protect environment	<p>Protection of the environment is the responsibility of all levels of government, industry and community. Environment protection must be an integral component of decision-making. Industry innovation and community participation is critical in achieving environment protection.</p> <p>EPA’s ability to contribute to the State Government’s protection of the environment is a function of its funding, its personnel and decision-making and programs. There may be an opportunity to consolidate resources to focus on core business.</p>
Community participation	<p>The EP Act applies the ‘principle of accountability’ (s 1L(2)), which must be considered in the administration of the EP Act. Section 1L provides:</p>

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	<p>“Principle of accountability</p> <p>(1) The aspirations of the people of Victoria for environmental quality should drive environmental improvement.</p> <p>(2) Members of the public should therefore be given-</p> <p>(a) Access to reliable and relevant information in appropriate forms to facilitate a good understanding of environmental issues;</p> <p>(b) Opportunities to participate in policy and program development;”</p> <p>Part IV establishes the review jurisdiction of the VCAT and the jurisdiction of the VCAT to make a declaration (limited to decisions able to be reviewed).¹⁸</p> <p>Community participation in the decision-making process under the EP Act is limited to applications for works approval, licence amendment or a ‘long-route’ licence (requirement of application to give notice to the public). Community participation is not provided under the EP Act for any other approval or decision made by the Authority, including issuing notices and enforcement.</p> <p>Where the applicant/recipient applies for merits review of the EPA decisions listed in s32(1) before the VCAT, the community may apply to be joined to the proceeding on ground of interest (s60 of the <i>Victorian Civil and Administrative Tribunal Act 1998</i>). Where the community is not aware of the applicant’s/recipient’s initiation of the proceeding the opportunity to apply to be made a party is missed. Awareness is typically created by local media coverage or direction of the VCAT. No notification is required by the EPA or the applicant/recipient.</p> <p>Restrictions in the EP Act preventing community participation and merits and judicial review of EPA decision-making is a failure to deliver environmental justice.</p> <p>EPA’s vigorous litigation in relation to the extent of the declaratory provision renders the power virtually useless. Amendment of the EP Act is required to insert a provision equivalent to s149 of the <i>Planning and Environment Act 1987 (Vic)</i> allowing VCAT to intervene where appropriate.</p>

¹⁸ *Ileowl Pty Ltd v Environment Protection Authority (Includes Summary) (Red Dot) [2015] VCAT 1105*

Issue	Ileowl Comment
	It is important that community members with a genuine interest be able to review EPA decisions. This would allow the industry proponent to directly address genuine community concerns rather than through the EPA where privacy constraints prevent direct identification of individuals.

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;*

Issue	Ileowl Comment
Governance	It is important that all EPA's decisions that impact industry are reviewable on the merits before the VCAT (i.e. minor works pollution abatement notices, clean up notices, exemptions and research demonstration and development approvals are excluded).
Funding	No comment.
Resourcing	Failure to attract, retain and reward experienced staff, particularly in regional Victoria is a challenge. Turn over of EPA personnel is a significant challenge for industry in achieving consistency and certainty.

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; and*

Issue	Ileowl Comment
Statutory powers	<p>Excluding determination of applications for works approval or a long-route licence application, there is no right/opportunity for community participation in the process.</p> <p>Voluntary community consultation completed by Water Corporations in planning infrastructure upgrades is then duplicated by the works approval or long-route licence process increasing costs and delaying the delivery of improved infrastructure. The community consultation is a component of preparing each Water Plan.</p> <p>Duplication and delay is also replicated where the planning process has already been completed and involved notification.</p> <p>For example the works approval process for the Numurkah Water Treatment Plant referred to above.</p>
Emerging risk/issues	<p>Deregulation of organic waste land application will undermine existing investment by scheduled premises operators and allow inexperienced operators to enter the market with no oversight by State Government.</p>

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

Issue	Ileowl Comment
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Issue	Ileowl Comment
Innovation	It is critical that EPA together with Federal, State and Local Government facilitates investment in innovation by industry. All financial risk is with industry – EPA is not accountable for the success or failure of industry investment in innovation.
Consultation	<p>Genuine and substantive consultation in development of guidance and policy.</p> <ul style="list-style-type: none"> - Long EPA delivery of guideline then unfeasible (short) industry consultation - No detailed response to industry contribution or acknowledgement of contribution (e.g. Classification 2015/205 referred to above)
Land use & development planning	EPA to facilitate and support work to prevent encroachment of incompatible land use within the separation distance for existing waste management facilities.
Certainty of regulation and enforcement	<p>This is critical for industry investment. Examples are mentions throughout this submission.</p> <p>Continual sanction focused enforcement has contributed to the loss of 3 site managers and 2 business partners. The enforcement process has not improved the environmental outcome for this site and has wasted significant resources.</p>

1. What do you think are the key environmental challenges which will impact the EPA in the future?
2. What aspects of the EPA's work do you value and wish to preserve in the future?
3. How can the EPA effectively work in partnership with other government agencies to meet the environmental challenges of the future?
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?

6. What role should the EPA play in emergency management?
7. How can the EPA better identify and, where necessary, address problems that are the result of past activity?
8. What can the EPA do to avoid potential future problems?
9. What role should the EPA play in improving environmental outcomes beyond those necessary to safeguard human health?
10. What role should the EPA play in reducing greenhouse gas emissions?
11. How do you see environmental justice being applied to the work of the EPA?
12. 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?
13. Are there any other issues relevant to the Terms of Reference that you would like to raise?