

SURF COAST SHIRE COUNCIL

EXAMINING THE FUTURE
TASK OF VICTORIA'S
ENVIRONMENT
PROTECTION AUTHORITY

RESPONSE TO DISCUSSION PAPER

30 OCTOBER 2015

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INTRODUCTION

The Surf Coast Shire Council welcomes the opportunity to make a submission for the independent inquiry into the Environment Protection Authority Victoria (EPA).

It is understood from the Terms of Reference that public health issues are a key focus of the inquiry and therefore this submission has been prepared by Council's Environmental Health Department and Waste Management Department. The submission should not be interpreted as being Council policy but rather a technical submission to assist the inquiry.

The Surf Coast Shire, with its beach, bushland and rural environment, is located in south-western Victoria, 120km from Melbourne, 21km south of Geelong and close to the extended Geelong Ring Road. The Surf Coast Shire is an appealing destination for holiday makers and international visitors, or those looking to make a permanent sea change. The Shire is home to some of the world's best surfing locations, with the iconic Great Ocean Road beginning in the Surf Coast Shire.

INTERACTION WITH THE EPA

The Surf Coast Shire interacts with the EPA in a number of ways in delivering its services to the community such as:

- Managing EPA licensed premises such as transfer stations and landfills;
- Managing contaminated land as a land owner, as the planning authority when making and enforcing the planning scheme and planning permit conditions
- Regulating and administering relevant provisions of the *Environment Protection Act 1984* (the 'Act') e.g. septic tank approvals, littering and illegal dumping of waste, noise/odour and other public health complaint investigations;
- Relying on technical advice through State Environment Protection Polices (SEPPs), Codes of Practice, guidelines and referral advice for land use planning decisions.

SUBMISSION

This submission is made from an operational perspective of our organisation. Although staff within the organisation generally feels it values and works well with the EPA there are some areas and examples provided where this could be enhanced to provide improved environmental and public health outcomes for the community.

1. ONSITE DOMESTIC WASTEWATER MANAGEMENT

Council is responsible for administering and regulating Septic Tank Systems or Onsite Domestic Wastewater Systems designed to treat under 5000L of sewage per day under the Act and developing Domestic Wastewater Management Plans (DWMP) under the SEPP (Waters of Victoria).

Responsibilities include:

- Approving the installation/alteration and use of septic tank systems on properties where reticulated sewerage is not available;
- Regulating the ongoing maintenance of septic tank systems; and
- Developing and implementing a DWMP.

Approving the installation/alteration of septic tank systems

Council is responsible under Section 53M of the Act to assess applications for a permit to install/alter a septic tank system within the municipality. The Act requires Council to refuse to issue a permit if the proposed septic tank system is not of a type approved by the EPA.

Council values and relies on the EPA for providing a state-wide approval system stipulating the types of septic tank systems that Council can approve for the installation in Victoria. This system allows for a consistent approach by local government to ensure they are only allowing the installation of EPA approved septic tank systems throughout Victoria.

Septic Tank manufacturers are currently required to apply to the EPA to have their system approved for use in Victoria and it is the responsibility of local government to ensure the proposed system is appropriate and suitable for the particular site.

Local Government are also required under the SEPP (Waters of Victoria) to ensure that permits are consistent with guidance provided by the EPA, including that provided in the current Code of Practice - Septic Tanks On-Site Domestic Wastewater Management.

The EPA has recently identified the need to reform its administration of the onsite wastewater program and intend to remove the requirement for individual treatment systems to hold an EPA certificate of approval (CA). Instead, EPA will approve only types of systems, as required by the Environment Protection Act 1970.

The EPA have indicated that Councils will need to rely on the Australian Standards to approve septic tank systems however this is difficult and poses some issues such as:

- Results in less resources to provide current service delivery;
- Council staff (Environmental Health Officers) do not have the expertise to assess specific treatment systems for approval;
- Likely to result in an inconsistent regulatory approach across the state;
- Refusing approvals for unsuitable systems will result in costly legal challenges; and
- This defers risk and liability of failing systems onto Council;

Ongoing maintenance of septic tank systems

Council does not provide a proactive monitoring program to regulate the maintenance of existing septic tank systems however does respond to complaints of failing systems affecting the environment and/or public health.

The current regulatory framework does not provide an adequate funding or cost recovery model for this activity so makes it difficult to conduct proactive monitoring of existing septic tank systems.

There are a number of older systems within the municipality which cause legacy issues such as pollution due to off-site discharge or discharge to ground water. These systems were approved during a period when this was accepted practice. It is not clear if Council can enforce these systems to be upgraded to current standards due to existing permits issued to allow operation of these legacy systems.

Domestic Wastewater Management Plans

Council is required to develop and implement Domestic Wastewater Management Plans (DWMP) under the SEPP (Waters of Victoria).

Surf Coast Shire has undertaken DWMPs for all unsewered townships either as part of its strategic planning reviews or where funding was available for specific townships that were considered high risk in terms of causing environmental and public issues from the inadequate management of existing onsite domestic wastewater systems.

The challenge is implementing the recommended actions from the DWMP's due to the current lack of funding, ability to recover costs and lack of statutory powers relating to legacy systems.

Recommendations:

- The EPA continue to provide a statewide certificate of approval system that ensures state wide consistency;
- The EPA continue to provide and enhance their leadership role in onsite domestic wastewater management by providing for a broader regulatory reform, to enable councils to manage legacy issues and an adequate funding model to monitor and manage maintenance issues for existing systems;
- The EPA provide guidance and training for councils;
- The EPA facilitate the collection of data in consultation with local government and water authorities to better understand pollution issues from septic tank systems; and
- Provide a stronger role in the development and implementation of Domestic Wastewater Management Plans.

2. PUBLIC HEALTH, NOISE AND ODOUR INVESTIGATIONS

Council is responsible for administering the 'nuisance' provisions under the *Public Health and Wellbeing Act 2008* (the 'PHW Act'). It applies to nuisances which are, or are liable to be, dangerous to health or offensive (offensive means noxious or injurious to personal comfort) and this can include noise or emissions such as odour.

Council is required under Section 62 of the PHW Act to investigate any notice of a nuisance. If upon investigation a nuisance is found to exist, Council must:

- If of the opinion that the matter is better dealt with privately advise the complainant of available methods to do so;
- If the land is unoccupied or the occupier/owner of the land cannot be found enter the land and take steps to abate the nuisance;
- Issue an Improvement or Prohibition Notice; or
- Bring proceedings for an offence to the Magistrates Court.

It's noted under the discussion paper that EPA are responsible for odour offensive to humans, however Council is also often involved with managing odour complaint investigations due to its responsibilities under the PHW Act.

Due to broad nature of the nuisance provisions, Councils Environmental Health Officers can refer to more specific regulatory controls to manage noise issues such as local laws, planning permit conditions or building regulations to resolve complaint investigations.

It is understood the EPA have powers under the Act to control pollution such as odour or noise. However, it remains unclear where EPA's roles and responsibilities are on certain situations which provide frustration for the community who are sometimes referred from one authority to another when making noise or odour complaints.

To assist in resolving confusion of roles and responsibilities of EPA and local government, it would be worthwhile considering a resource sharing protocol or memorandum of understanding for the investigation of noise, odour or pollution complaints. This could help avoid community frustration and allow for a more efficient and effective response to community complaints. This approach would also allow the EPA to focus on more serious breaches of the Act.

Council also values and relies on the EPA's noise/odour advice, guidelines and codes of practice to assist in investigating complaints.

Recommendation:

- The EPA considers developing a resource sharing protocol with local government for responding to noise and odour complaints.

3. WASTE MANAGEMENT

This part of the submission from Surf Coast Shire Waste Department addresses the EPA Inquiry Terms of Reference items 1-3 and item 5.

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;*

Regulation being applied to closed and existing sites needs to ensure the cost to the community is not disproportionate when compared to the benefits being achieved for the environment. The risk and potential pollution for sites with retrospective application should be clear and defined by the EPA to justify retrospective application of increased standards and long term costs of further monitoring.

Recommendation:

EPA needs to apply a regulatory role which considers all factors relating to an issue and not just the potential health or environmental impacts and issues. There needs to be a risk based process applied to EPA considerations which will allow the most suitable management approach to be chosen based on environmental risk and financial cost to the community.

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

The EPA does not provide the correct environment to allow the organisation to be the best EPA available to the Victorian community. Issues that reinforce this culture and need to be addressed include:

- The EPA has developed a risk aversion process where third parties provide audits and approvals based on a single standard regardless of risk.

The process involves auditors and third party approvals who are required to review and approve significant bodies of work relating to, in many cases, regular requirements for site operation. This creates another cost to licence holders and should be the role of the EPA, not third parties, which have the risk transferred to their organisation if they approve something different from the EPA guidelines.

Recommendation:

That the EPA work closer with key stakeholders and licence holders towards agreed and common goals.

3. *The EPA's appropriate role in protecting the environment;*

The EPA has an important role to play in protecting the environment, however this should not be considered in isolation from other community factors such as location, demographics and financial burden.

Concerns with the EPA's current systems and requirements, particularly for landfills, include the:

- Complexity of the construction process for licence holders and the impacts of changing requirements and processes. This creates increased costs to the community, with often limited increase in environmental benefit.

- Onerous audit requirements and auditors that are risk averse. This increases costs and decreases the ability to improve processes.
- Impacts of auditing process are excessive costs borne by Council.
- Significant financial costs to achieve compliance with increasing standards and costs to communities. These costs have typically been reflected in the lower risk construction requirements and landfill levy differential between metropolitan and rural areas. These factors have now been removed which does not support rural communities.

Recommendation:

Review the auditor process to reduce the financial and resource burden that has moved to local government and licence holders.

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;

The EPA has also removed risk from the organisation and now fully relies on external parties and auditors to provide advice to licence holders and approve landfill designs. This change has shifted considerable cost to licence holders and communities but no alteration to the EPA financial delivery mechanism.

The key issue relating to Landfill levy include:

- Insufficient return of landfill levy to Councils to provide major infrastructure upgrades
- Greater investment and support for waste treatment and new technologies. No research and development consideration.

Recommendation:

The distribution of the landfill levy must be significantly increased, with a focus applied to existing operating landfills.