

# North East Water's Submission to the Independent Inquiry into the EPA

October 2015

## INTRODUCTION

Thank you for the opportunity to respond to the *Examining the Future Task of Victoria's Environment Protection Authority* discussion paper as part of the Independent Inquiry into the EPA. North East Water reviewed and contributed to the VicWater submission on behalf of the Victorian Water Industry. In addition to this, North East Water's response to the discussion paper is detailed in this submission.

## SUBMISSION

### WHAT DO YOU THINK ARE THE KEY ENVIRONMENTAL CHALLENGES WHICH WILL IMPACT THE EPA IN THE FUTURE?

North East Water considers that there are a number of key challenges which will impact the EPA in the future and would like to highlight the following three areas:

1. **Urban encroachment around Wastewater Treatment Plants (or other industrial sites)** - This could result in the need to relocate or undertake significant refurbishment of wastewater treatment (or other industrial) facilities at significant cost, and/or possibly lead to community conflict due to lack of meeting their expectations. ,
2. **Playing a role in addressing Climate change and climate variability - Understanding whether the EPA will have a role in setting climate variability/change policies and / or targets** - As an environmental regulator there will need to be consideration that regulatory processes are available to allow licensees to respond and adapt at an appropriate pace.
3. **Managing diffuse sources of pollution** - Although the *State Environmental Protection Policy (Waters of Victoria)* identified the need to address diffuse sources of pollution (i.e. other than licence holder discharges), it appears to be an ongoing management / implementation challenge. Investigations undertaken by North East Water have identified significant pollution within rivers leading to unsuitable source water quality for the supply of drinking water. Various catchment activities lead to the diffuse sources of pollution, and become a significant challenge for all stakeholders to address.

### WHAT ASPECTS OF THE EPA'S WORK DO YOU VALUE AND WISH TO PRESERVE IN THE FUTURE?

- North East Water values the working relationship with the regional EPA office (Wangaratta), who provide guidance and a conduit to the key departments and staff in the Melbourne head office. The regional office can relate to local challenges and has worked together with North East Water to deliver balanced outcomes. Furthermore, North East Water values the EPA's risk-based approach through ecological risk assessments (ERAs) to inform business decisions and licencing. This has resulted in valued outcomes for the environment and North East Water which align with other recent EPA initiatives such as licence modernisation.
- North East Water values the EPA's tools and guidance material as they are readily available, cover a breadth of topics and are of high quality. Some of the materials and contents are explored and reviewed via the EPA Water Industry Reference Group to ensure workability which improves its application.
- The EPA's auditing of licenced sites has been an excellent initiative and has provided North East Water with guidance on areas that require additional attention which were not initially apparent. An example of this is the introduction of site specific risk assessments and monitoring programs which North East Water is applying across all the wastewater treatment processes (including collection systems).
- The EPA's pathways processes have improved approval processes by providing a clear approach to progressing with licence related activities.
- The EPA's concepts being explored with water corporations such as licence modernisation, earned autonomy and off-sets via the EPA Water Industry Reference Group ensures information flow and sharing.

## HOW CAN THE EPA EFFECTIVELY WORK IN PARTNERSHIP WITH OTHER GOVERNMENT AGENCIES TO MEET THE ENVIRONMENTAL CHALLENGES OF THE FUTURE?

- The EPA can work strategically with agencies that have a stake in catchment management, including DELWP and catchment management authorities, to focus more on diffuse pollution management.
- The EPA could work more closely with agencies (e.g. LGAs and CMAs) to further develop the land capability assessment process which is critical in relation to septic tank management to ensure we are not creating legacies for future generations to address.
- The EPA could work with DHHS to investigate opportunities to identify synergies with the Safe Drinking Water regulatory model (discussed in more detail below).

## HOW CAN THE EPA'S ROLE IN SAFEGUARDING THE COMMUNITY AGAINST THE HEALTH IMPACTS OF POLLUTION BE CLARIFIED OR STRENGTHENED?

- The EPA could have a stronger presence as a supporting agency within the incident management sphere. The EPA could play a key role in planning, response and recovery with other agencies in many incidents, not necessarily only pollution related (for example during flood events). This will enhance skills and relationships when responding to complex pollution events.
- The EPA could provide further support to water corporations in preventing inappropriate development adjacent to wastewater treatment plants.

## HOW COULD STATUTORY FRAMEWORKS MORE EFFECTIVELY PREVENT FUTURE ENVIRONMENTAL RISKS AND LAND USE CONFLICTS?

- The EPA could be more active in land use planning and consultation. Currently in North East Water's region, approvals are largely limited to catchment management authorities and Goulburn-Murray Water for catchment-based planning and buffer distance referrals. While the EPA supports our approach they seem reluctant to drive approvals or co-share the outcome. This can result in growth into areas of known future conflict between the owner occupier and water corporations.

## HOW CAN THE EPA BETTER IDENTIFY AND, WHERE NECESSARY, ADDRESS PROBLEMS THAT ARE THE RESULT OF PAST ACTIVITY?

- The EPA could work more cooperatively with agencies to achieve environmental improvement rather than focussing primarily on enforcement. Legacy issues do surface, and are not necessarily foreseeable, therefore while an enforcement approach may be necessary in some instances, a collaborative approach to address the issue is recommended. Such issues may present significant reputational and / or financial challenges, which leads to complexities in identifying solutions immediately. In some instances an acceptance that an incremental improvement is a better outcome than the status quo (when the costs or community acceptance of an outcome are challenging) could see significantly improved environmental outcomes.
- There is opportunity for the EPA to accept that an incremental improvement may result in a better outcome if compared to doing nothing, including at times where clear guidance may be absent. North East Water has observed that a 'full solution' may be cost prohibitive, however an incremental improvement may be affordable and result in an environmental benefit. For instance, providing reticulated sewerage services to small towns may be cost prohibitive, however a partial scheme, or a septic improvement plan and program, may generate an improved and affordable outcome.

## WHAT CAN THE EPA DO TO AVOID POTENTIAL FUTURE PROBLEMS?

- The EPA should continue to foster a risk-based approach using science to inform the level of risk, with a requirement to regularly monitor to ensure the risk position remains acceptable. The EPA should remain consultative, and tap into expertise to validate risk acceptance.
- The EPA should also maintain currency with scientific information which relates to the Authorities' jurisdictions, such as air, water land etc. which will compliment a risk-based and continuous improvement approach.

## WHAT ROLE SHOULD THE EPA PLAY IN IMPROVING ENVIRONMENTAL OUTCOMES BEYOND THOSE NECESSARY TO SAFEGUARD HUMAN HEALTH?

- The EPA should continue to play a role in ensuring environmental outcomes that protect ecological values (flora and fauna) and are aligned to pollution inputs.

## WHAT ROLE SHOULD THE EPA PLAY IN REDUCING GREENHOUSE GAS EMISSIONS?

- The EPA needs to consider impacts of greenhouse gas emissions as part of their decision making processes. For example, an expensive, energy intensive process may deliver better water quality, however this may not deliver a holistic environmental improvement (as well as social and financial). The EPA should recognise impacts from greenhouse gas emissions and work proactively with the licence holders to ensure holistic environmental outcomes are achieved.
- The EPA could consider establishing incentives for licence holders to demonstrate energy reduction through encouraging innovation or optimisation. ERAs could play a significant role in achieving a reduction in greenhouse gas emissions. For example, a relatively passive additional treatment barrier may result in reduced ecological risk, such as wetland treatment.

## HOW DO YOU SEE ENVIRONMENTAL JUSTICE BEING APPLIED TO THE WORK OF THE EPA?

- It is a critical role of the EPA that it applies fair treatment and application of environmental laws. North East Water sees that the EPA will need to maintain that role, with ongoing consultation to understand legal responsibilities. It is important that blatant or deliberate polluters, as well as repeat offenders, are dealt with via legal avenues.
- North East Water endorses an 'undertaking' approach to address areas of concern that may lead to ongoing non-compliance or unacceptable risk, where finances can be directed to addressing an issue rather than directed elsewhere.
- Environmental justice may also be applied through achieving a balance between community engagement or expectations and licensees requirements. This may be achieved without EPA intervention if the licensee values community engagement and has processes that address such issues with priority.
- This may also be applied through a risk-based approach rather than via a broad-brush approach. For example, septic tanks pose varying risks to beneficial uses, depending on a number of location specific considerations.

## 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.

- The DHHS model for regulation of safe drinking water follows the concept of earned autonomy. This allows North East Water to implement a risk-based system to manage public health and prioritise improvement based on regulation and excellent guidance material. Compliance is assessed via independent auditing every two years to demonstrate compliance with regulations. The DHHS approach has resulted in vast improvements to North East Water's (and all Victorian water corporations) product quality and assurance of the provision of safe drinking water. This approach also aids planning to ensure future challenges are addressed.
- The Licenced Operator Risk Assessment (LORA) system for licence holders could be further explored and reviewed. The evaluations could be more aligned with the DHHS approach to drinking water quality risk management where regulation directs business to apply a risk-based approach (largely self-regulatory), and demonstrate compliance via independent audits. An example of better efficiency through this self-regulatory approach is the Environmental Improvement Plans approval process. For future consideration is whether this process adds value or perhaps an audit program would be better suited to evaluate an organisation's ability to identify risks and address them accordingly.

## OTHER COMMENTS

North East Water has provided feedback aligned to those questions prompted via the submission form. Additional comments are also provided for consideration in accordance with the *Terms of Reference* as follows:

- North East Water has observed on rare occasions that the EPA's interpretation of Policy can change without clear explanation or consultation. This can be perceived as 'Policy on the run' at times. An example of this was the addition to licencing that reflected the sizing requirement of 90th percentile irrigation storages to avoid a non-compliance during wet weather discharge. The removal of the S30A mechanism to permit discharge to a water course during sustained wet weather occurred mid Water Plan (expenditure plan), therefore water corporations did not have approved funding to address such issues promptly. Approximately \$30 million would have been required for North East Water to address the storage volume short-fall across the region.

North East Water has opted to continue to apply the ERA approach to systems which are vulnerable to wet weather discharges; this will inform investment or alternate solutions. It has been demonstrated through ERAs that some wet weather discharges pose negligible risk to beneficial uses, meaning that simply applying a 90th percentile storage investment may have been a low priority or unnecessary investment.

It is important that the EPA understands that sensible financial investment is important, and what may appear to be a slight interpretation shift may in fact result in significant financial burden.

- There is opportunity for the EPA to work with licence holders to ensure best (or expected) practice is occurring to meet all licence conditions. It can be challenging to report compliance for some of the licence conditions without clear evidence that the condition is being followed.
- Licence limits and statistical calculations can lead to perverse outcomes. For example, where an annual median measures compliance, it may encourage additional discharges to occur for statistical purposes purely to achieve compliance. This became quite evident where North East Water increased reuse irrigation at North Wangaratta, thus limiting the number of months (hence number of samples) where discharge to water occurred. The compliance challenge was presented due to the Wastewater Treatment Plant performing better during the months during which the site was not discharging to a waterway, which also coincided with low waterway flows. For North East Water to simply comply to licence conditions, there would have been a requirement to discharge during each of the warmer months despite the higher risk to the environmental values. Sensibly, this was addressed via a licence amendment.

## CONCLUSION

North East Water appreciates the opportunity to provide a submission as part of the Independent Inquiry into the EPA. Should the EPA consider some of the suggestions and opportunities outlined above, North East Water believes that the EPA will continue to remain an important and progressive regulator into the future.