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Review of the *Environment Protection (Water Quality) Policy 2003*

Submission by 'Friends of Gulf St Vincent', a volunteer organisation of 96 members (individual and groups). The 'Friends' conduct at least two public forums each year in different places around the Gulf, to consider environmental issues for the Gulf. In the last year, we have added to our credentials with publication (with the Royal Society of South Australia) of the 500 page 'Natural History of Gulf St Vincent'. Our members contributed directly to about a third of the 38 chapters.

Specific questions raised in the discussion paper

Question 1–Cl 13: Should the mandatory requirement, currently in cl 13, be replaced with a general duty? If so, should this duty be enforced in the way set out in this discussion paper?

Submitter response
Not supported.

Many of the water bodies in South Australia are under significant stress exacerbated by the drought. Even without drought conditions the ephemeral nature of many of our rivers and streams mean that waste discharges into these water bodies at times of low or no flow can create significant problems. Removing the offense provisions from the WQEPP is seen as a backward step. Relying on the General Environmental Duty places the onus on the EPA rather than the polluter.

One of the advantages of the WQEPP is that it clearly spells out the requirements that must be met if one wishes to discharge a waste into a water body.

Replacing a mandatory requirement with a "reasonable and practical" obligation introduces a subjective element into the WQEPP, can lead to inconsistency in the way the policy is used and sends the wrong message.

Question 2–Schedule 2: Should the proposed change to cl 13, be accompanied by a plan for tightening the Water Quality Criteria in Schedule 2?

Submitter response
Support tightening the criteria but retain the offense provisions.

The WQEPP provides a mechanism, through the so-called "fast track process", to quickly vary the criteria that apply to particular water bodies should this be deemed necessary to do so. The EPA has not used this process to vary any of the criteria to date despite there being considerable information (eg the Adelaide Coastal Waters Study and the Port Waterways Water Quality Improvement Plan) to indicate that lower values were required in some areas. The issue therefore would appear to be a lack of resolve on part of the EPA rather than a deficiency in the WQEPP.

Tightening the values would have a beneficial impact but only if the EPA was prepared to enforce the tighter values. Tightening the values but removing the offense provisions is counterproductive.

Question 3–Cll 14 and 15: If cl 13 is not changed to a general duty and remains as a mandatory requirement, should the specified dimensions of the mixing and attenuation zones be changed, making them less specific and better able to be tailored to the specific circumstances of each case?

(If cl 13 is changed to a general duty there will be no need for exemptions and thus no need for cll 14 and 15 which are exemptions from mandatory conditions. They can be repealed).

Submitter response
Not supported.

It would clearly be preferable to have no mixing or attenuation zone with criteria having to be met at the end of the pipe. Mixing zones are always problematic as they allow a degree of pollution and are difficult to precisely measure and monitor. Nevertheless they are seen as necessary to provide industry with a mechanism to discharge lawfully while they implement environmental improvement programs to meet the ambient water quality criteria required. Reliance on the general environmental duty would represent a significant loosening of requirements, introduce a degree of subjectivity and inconsistency to decision making and be more difficult to enforce.

If the mixing zone provisions were removed then Clause 44 requiring monitoring may also no longer be required, or if retained it would be seldom used.

Question 4–Cll 17 and 19: Should there be a new approach to the discharge of the wastes listed in Part B, Schedule 1 of the Act (listed wastes) based on a duty of care and the requirement for improved management of these wastes? If so, should the mandatory requirements for the discharge of other pollutants listed in Schedule 4 remain?

Submitter response
No supported.

The explanatory document misses the point in the discussion about listed wastes. Clauses 17 and 19 are strict liability provisions where an on-the-spot fine can be issued *i.e.* if you see it happening you can take immediate action without having to wait for a laboratory analysis. The onus of proof is on the polluter to prove that they were not committing an offense. The purpose of including "listed wastes" was to pick up on all those substances that are listed in that schedule. So, for example if someone was seen tipping acid, alkali, pesticides or any other listed waste into a water body then they could be fined. The intent was to pick up on gross polluting activities where someone discharges from, for example, a container labeled with a concentrated listed waste.

Removing listed wastes from Schedule 4 also removes all those substances that are listed and all of them can cause significant water quality problems.

It appears that the EPA is interpreting "listed waste" as even minute traces of chemicals that are listed in the schedule. This is nonsense. Tap water would be classified as a listed waste by this definition, however discharge of tap water is not licensed by the EPA as a listed waste.

Retaining offense provisions for the discharge of concentrated listed waste is essential. If the policy is not clear on when the provision applies then this needs to be addressed but not at the expense of removing the provision in lieu of a general environmental duty requirement.

Question 5(a)–Cl 18: Should cl 18, the provision relating to 'wastewater storage lagoons' be treated as a particular activity and be transferred into Part 4, Division 2 of the Policy

Submitter response
Supported.

All lagoons leak and. depending on the area. can cause environmental problems. Clause 18 attempts to specify controls that must be incorporated into the design of lagoons to ensure that when they do start leaking that measures can be taken to stop harm from occurring. Dealing with these through develop controls is however clumsy and not particularly effective.

Development of a mandatory code of practice(s) and linked to the WQEPP as either a separate (new) provision, or possibly through Part 4, Division 2 as suggested, may produce a better environmental outcome and greater flexibility.

Question 5(b)–Cl 18: Should cl 18, the provision relating to 'wastewater storage lagoons' be expanded to include sedimentation basins, managed wetlands and tailings dams?

Submitter response
Supported – see comments above.

Question 5(c)−Cl 18: Should cl 18, the provision relating to 'wastewater storage lagoons' be managed by a Code of Practice enforceable by an Environment Protection Order and not by mandatory provisions?

Submitter response
Supported – see comments above.

Other comments relating to the Environment Protection (Water Quality) Policy
The WQEPP sets out very clear requirements that need to be met by someone who wishes to discharge a waste. It provides certainty to industry and a reasonable degree of protection for the environment. If need be the environmental values and the criteria that apply to particular water bodies can be varied based on site specific information. This is a sensible approach.

It would appear that some of the perceived problems with the WQEPP are more related to understandings within the EPA on how to apply the policy. If this is the case then it needs to be addressed through better training or other means.

If you have any other comments relating to the Policy please provide them here.
None.

Yours sincerely

John Caldecott
President
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