

18 May 2018

Ms Veronica Lanigan
Manager SEPP (Waters) Review
Water & Catchments
Department of Environment, Land, Water and Planning
8 Nicholson Street
EAST MELBOURNE VIC 3002

Dear Veronica

Re: Water industry response to the Draft SEPP (Waters)

Thank you for the opportunity to provide feedback on the Draft SEPP (Waters). SEPP (Waters) will be a critical regulatory policy document for the state's water corporations, and will have significant influence over water corporations' investment decisions, infrastructure costs, customers' bills and ultimately environmental outcomes for the life of the policy.

Commensurate with its importance, VicWater and the state's water corporations have committed significant time and resources to this review since early 2015, with multiple submissions, workshops and individual clause negotiations. Although it has been demanding for all parties, these efforts have undoubtedly resulted in a better draft of SEPP (Waters) that is broadly supported across the water industry. The conduct of the DELWP and EPA officers during the review process provides an excellent example of how to approach consultation with the water industry when detailed technical material is under review.

This submission will highlight key points from VicWater's 2015 submission on the SEPP (Waters) Discussion Paper, reflects on the outcomes achieved in the priority SEPP water clauses, provides feedback on other SEPP water clauses, and note areas that need further clarification.

Key points in the 2015 VicWater submission on the SEPP (Waters) Discussion Paper

In June 2015 VicWater held a workshop to prepare a submission in response to the SEPP (Waters) Discussion Paper. The workshop was attended by approximately 20 officers from water corporations across Victoria. The following key points were made:

- ◆ A strength of the outgoing SEPP (WoV) framework was the clarity that it provided to the economic regulator when considering investments with an environmental benefit. It is notable that such a link is less important under the new Essential Services Commission's PREMO model, under which water corporations must combine performance in risk management, customer engagement, management accountability and outcomes, rather than the previous more singular focus on efficiently meeting regulatory requirements.

- ◆ Water corporations' experience with the outgoing SEPP (WoV) was characterised by the regulator's strong emphasis on the impact of licensed discharges on beneficial uses, with limited consideration of: (1) the current state of the receiving waters, (2) the catchment-wide threats and impacts on the receiving waters, (3) how threats are evolving, and (4) the overall most efficient and effective way of improving stream condition and protecting beneficial uses.

Water corporations requested a more flexible, risk-based regulatory framework that maximises opportunities to optimise investment to achieve broader environmental outcomes.

- ◆ The implementation of the outgoing SEPP (WoV) focused on inflexible licence discharge conditions at the expense of flexible solutions. It was seen as a low cost model for the regulator, but a high-cost model for the licence holder.
- ◆ Water corporations perceived failure of the SEPP (WoV) was that it did not encourage the most efficient and effective environmental outcomes. Despite notionally providing for offsets and more flexible approaches, there was a lack of clarity about the decision-making framework and the slow uptake of flexible approaches by the regulator.

Outcomes for priority clauses as identified by water corporations

During 2016, VicWater surveyed water corporations to identify priority clauses for engagement with DELWP and EPA. These were discharges and mixing zones (cl. 27-30), sewerage management (cl. 35), offsets (cl. 26) and onsite wastewater management (cl. 32). These clauses became the focus for VicWater, with dedicated working groups, workshops and submissions on each clause.

The water industry's primary objectives for these clauses were for the inclusion of an environmental risk assessment into the licensed discharge application and review process, and for a risk-based modifier to provide for more flexible implementation of mixing zone and sewerage management requirements. Water corporations did not support an overhaul of the onsite wastewater management and offsets clauses, rather they desired the existing provisions to be strengthened and better utilised.

VicWater's assessment of the outcomes with respect to each of these clause-areas are discussed in more detail below:

- ◆ Water corporations have been unanimous and unambiguous in their desire for a SEPP that structurally seeks to avoid uneconomic investment in wastewater treatment and sewerage management infrastructure, in favour of catchment-based approaches - provided they can deliver a better overall outcome for communities and the environment, at a practicable cost. There was extensive debate and negotiation across several clauses regarding the correct mechanism to deliver this outcome, resulting in the concept of 'practicability'.

The assessment of practicability will be central to the management of licence applications, mixing zones and sewerage networks. The core element of practicability, as understood by water corporations, is that it has regard to risk, the availability and suitability of management actions, and the proportionality of the actions to the risks. Water corporations endorse this concept as a central feature in the draft SEPP waters.

Despite endorsing the concept of practicability, there remains a concern that the regulator may adopt an interpretation of practicability that views 'best practice', 'continuous improvement' and 'actions and management practices' exclusively through the lens of the discrete water corporation asset, rather than the catchment as a whole. These concerns are not unfounded.

High hopes were also held for the offsets clause in the outgoing SEPP, which have not been delivered on. In 2015, the VicWater submission on the SEPP discussion paper included the following:

"Despite the current SEPP providing for offsets and more flexible approaches, water corporations have been disappointed by the lack of clarity about the decision-making rules that are applied, and the slow uptake of flexible approaches by the regulator. Consequently water corporations perceive a failure of the SEPP to encourage the most efficient and effective environmental outcomes."

The clause 12 explanatory note goes some way to alleviating this concern, stating that practicable actions should be considered on a case-by-case basis “so that the best overall outcome is achieved and beneficial uses in this Policy are protected to the greatest extent achievable”. This implies that catchment-based approaches, if they lead to the best overall outcome, would be preferable to investment in wastewater treatment and sewerage management infrastructure. A way to resolve this concern entirely could be to include a more explicit reference to promoting overall ‘catchment’ outcomes in the above phrase.

Water corporations do not seek to avoid asset upgrades under circumstances where the asset is a significant source of catchment risk, upgrade options are proportional to the risk, and the community supports the investment and outcomes that will be achieved. A reference to catchment outcomes would not be a loophole in such situations.

Water corporations will continue to work closely with EPA to develop guidelines, or codes of practice, that specify how the concept of practicability should apply to each priority clause.

- ◆ The inclusion of a risk assessment, and consideration of the existing environmental quality of the receiving environment in the draft waterway discharge clauses (cl. 21 and cl. 22), is a significant improvement on the outgoing SEPP (WoV). These draft clauses reverse the rigidity of the outgoing SEPP (WoV) which required “discharge of wastes and wastewater... in accordance with the waste hierarchy, with priority given to avoiding the generation of wastewater”, and which gave rise to over-investment in land-based reuse schemes and potentially encouraged over-irrigation. The new clauses also begin to reverse the over-emphasis on the impact of licensed discharges at the expense of catchment-wide threats and impacts on the receiving waters.

In managing waterway discharges under the new SEPP (Waters), water corporations expect to work collaboratively with EPA to develop tailored solutions that deliver the overall most efficient and effective way of improving catchment/stream condition and protecting beneficial uses.

- ◆ Although water corporations generally support the transition to load-based targets, as an instrument to progressively improve waterway health, there are outstanding questions regarding their impact on the licensed discharge application and review process. Ultimately, load-based targets should be an instrument to focus attention on the most significant risks to catchment/stream condition and beneficial uses, rather than focussing on the sources and loads that are easiest to monitor.
- ◆ The offset clause is effectively rolled over from the outgoing SEPP (WoV). At the commencement of the review of SEPP (WoV), water corporations had hoped for significant change to the offsets clause to overcome perceived barriers to implementing offset arrangements. In the intervening time, a working group was established, including water corporations, EPA and DELWP, to investigate options to expand the use of offsets and during 2017, the Goulburn Valley Water Kilmore Treatment Plant offset arrangement was formally approved by the EPA. This has clarified the types of activities to which the clause is suited and a pathway to implementing them.

The inclusion of the “practicable” risk-based modifier in many clauses should provide a more flexible pathway for offset-style activities. However, as discussed above, the workability of this pathway is reliant on an interpretation of “practicable” that encourages water corporations to implement actions “so that the best overall outcome is achieved and beneficial uses... are protected to the greatest extent achievable”, be they traditional infrastructure upgrades or catchment-based. The upcoming Sewerage Management Guidelines project will look at options to allow the consideration of offset-style activities alongside traditional hydraulic capacity upgrades to the sewerage network. Nevertheless, it is water corporations’ preference for this interpretation to be strengthened in the applicable explanatory notes.

- ◆ The onsite wastewater clauses have retained the intent of the past SEPP (WoV), but with strengthened and clearer obligations for all parties. Water corporations support the intent of these provisions. However, it will remain to be seen how any non-compliance or underperformance will be managed by the authority, particularly in catchments where onsite systems represent an elevated risk to beneficial uses.

Water corporations welcome stronger engagement with councils during the development of Domestic Wastewater Management Plans and sewerage planning processes.

The strengthened audit and updating obligations in draft clauses 29 (5) and (6) will encourage a greater emphasis on councils' statutory obligations to regulate onsite wastewater systems. However, it is unclear how these obligations will be enforced. Without clear accountability, these audits and updates may fall by the wayside.

There is a new obligation on water corporations to prepare a "response" to councils' DWMPs, where a council proposes that reticulated sewerage is their preferred solution to the challenges of ongoing management of onsite systems. It is appropriate for water corporations to play this role since they have the knowledge and expertise to considering technical options, their funding requirements and their implementation.

Absent from the onsite wastewater management clauses are any instruments to focus attention on areas where onsite systems represent an elevated risk to beneficial uses. Although failing and under-maintained onsite wastewater systems are often viewed as a state-wide problem, it is likely that only a small proportion of failing systems are impacting on waterways (for example in higher rainfall areas, near waterways and on sloped ground).

Thank you once again for the opportunity to provide feedback on the draft SEPP (Waters). Once the policy is gazetted, work will continue on numerous guidelines and subordinate instruments, particularly to determine how the concept of practicable can be applied to promote overall catchment outcomes.

As we take these next steps, VicWater and water corporations look forward to continuing the exemplary standard of engagement that has typified the development of the draft SEPP (Waters).

Yours sincerely

Tony Wright
Chief Executive Officer

Additional comments provided from a water corporation in development of the VicWater Submission:

General consensus for around the business was that Coliban Water is happy with the draft SEPP (waters) and as you're aware has been involved in the various workshops over the last couple years. We also did not have any significant comments to add to the draft Vicwater letter, David Sheehan General Manager Water Quality Performance & Regulation, has provided a lot of minor edits, which may or may not add value to the VicWater' letter for your consideration however we would like to provide some comments below, specific to the draft SEPP (waters).

Clause 6 - Definitions

It would be useful to include a definition of Authority under Clause 6. Whilst it implicit that references to "the Authority" mean the "Environmental Protection Authority", to aid clarity, it would be good to make it explicit by including it in the definitions clause.

Clause 31 – Connection to sewerage

Consider the first part of Clause 31(1):

(1) If an on-site wastewater system cannot reuse or contain wastewater within the boundaries of a property in accordance with guidance provided by the Authority and a property is serviced by a sewerage system—

The greatest issue is that it is not clear when a Lot *'is serviced by a sewerage system'*.

To:

(1) If an on-site wastewater system cannot reuse or contain wastewater within the boundaries of a property in accordance with guidance provided by the Authority and the property is located within a sewerage district and can feasibly be connected to a sewerage system—

Title of Clause 40

Change title from:

40. Works affecting water dependant ecosystems and species

To:

40. Works affecting water dependent ecosystems and species

Schedule 2: Table 1:

Change:

Potable water supply Groundwater quality that is suitable for raw/ potable water supply.

To:

Potable water supply Groundwater that is suitable for human consumption without further treatment.

TABLE 3: BENEFICIAL USES FOR INLAND WATERS and TABLE 4: BENEFICIAL USES FOR MARINE AND ESTUARINE WATERS

In both tables there are several ticks that have an asterisk (*) beside them, but there is no footnote to either table that explains what the asterisk refers to (if anything)

Section 7 – Groundwater in Schedule 3: Environmental Quality Indicators and Objectives

With regard to the two sub-clauses below

For the purposes of potable water supply (desirable)—

(a) groundwater must not be affected to the extent that the level of any environmental quality indicator is greater than the level of that indicator specified for raw water for drinking water supply in the *Australian Drinking Water Guidelines*; and

(b) the constituents of groundwater must not be affected in a manner or to an extent that leads to the aesthetic water qualities being impacted, as defined in the *Australian Drinking Water Guidelines*.

(3) For the purposes of potable water supply (acceptable)—

(a) groundwater must not be affected to the extent that the level of any environmental quality indicator is greater than the level of that indicator specified for raw water for drinking water supply in the *Australian Drinking Water Guidelines*; and

(b) the constituents of groundwater must not be affected in a manner or to an extent that leads to the aesthetic water qualities being impacted, as defined in the *Australian Drinking Water Guidelines*.

The ADWG doesn't specify guideline values for raw water; therefore it would be preferable if the sub-clauses were rewritten as:

For the purposes of potable water supply (desirable)—

(a) groundwater must not be affected to the extent that the level of any environmental quality indicator is greater than the health-related guideline value for that indicator as specified in the *Australian Drinking Water Guidelines*; and

(b) the constituents of groundwater must not be affected in a manner or to an extent that leads to an aesthetic guideline value being exceeded, as defined in the *Australian Drinking Water Guidelines*.

(3) For the purposes of potable water supply (acceptable)—

(a) groundwater must not be affected to the extent that the level of any environmental quality indicator is greater than the health-related guideline value for that indicator as specified in the *Australian Drinking Water Guidelines*; and

(b) the constituents of groundwater must not be affected in a manner or to an extent that leads to an aesthetic guideline value being exceeded, as defined in the *Australian Drinking Water Guidelines*.

Thank you for VicWater's efforts in providing a coordinated industry input into the relevant clauses and the final submission.