

Specific Comments on SEPP Clauses, Explanatory Notes and Schedules

No.	Page #	Clause #	Title	Comment
1	4	6	Definitions	Reference is made to the ANZECC and ARMCANZ (2000) guidelines; however these are periodically updated (as noted in the PIA, which indicates a new release of the guidelines for 2018). Suggest that this is reworded to indicate that the most recent version of these guidelines is adopted.
2	4	6	Definitions	In the definition of artificial assets, can further clarification be provided as to what is an "off-stream private dam". If a private dam has a drainage line that allows for overflow to flow into a stream during periods of heavy rainfall, would this not be considered an off-stream private dam?
3	5	6	Definitions	The definition of background level - we have the opportunity to make this definition much clearer so that practitioners do not continue to refer to regionally elevated concentrations of indicators as background (more likely diffuse source pollution). Regionally elevated nitrate being a prime example.
4	5	6	Definitions	The definition of bore is unclear. The wording of the last clause "but does not include...", actually suggests that bores used for the drainage of desalination of land and the recharge of an aquifer are not bores.
5	8	6	Definitions	The term pollution is not defined. "Pollute" and "polluted" are included in the Definitions of the Environment Protection Act 1970, but pollution is not included in the definitions there either. The definition of "polluted" in the Act refers to s39(1) [for waters], s41(1) [for atmosphere] and s45(1) [for land]. For clarity, pollution should be defined in SEPP Waters.
6	9	6	Definitions	Include the term "weight of evidence" in the definitions so that it is clear what is intended by this phrase in Schedule 3, Clause 5
7	14	13 (1) (b)	Objectives	Given that one of the policy objectives is to "ensure that pollution to waters from both diffuse and point sources is managed in an integrated way to deliver the best outcome for the community as a whole", the word pollution should be defined in the Definitions section of SEPP Waters.
8	15	15 (2) (d)	Beneficial Uses of Groundwater	"is within any landfill cell" - suggest clarifying that this also applies to closed "single cell" landfills.
9	18	17 (4)	The environmental quality indicators and objectives	What is an "adverse impact", do you mean preclude the beneficial uses? Perhaps a definition of pollution would help?
10	18	17 (4) (b)	The environmental quality indicators and objectives	The groundwater investigation levels (GILs) from the NEPM are referred to. The NEPM GILs are based on AWQG (ANZECC and ARMCANZ 2000), ADWG (ADWG 2011 v1 at the time of NEPM issue) and GMRRW 2008. ADWG 2011 has already been revised five (5) times since the issue of the Amended NEPM in 2013. It is stated in the Amended NEPM that the guideline documents should be consulted for appropriate interpretation of guidelines. Suggest that this clause is replaced with reference to the hierarchy of the actual guidance documents.
11	50	54 (3)	Direct waste discharge to groundwater	I read the sub-clauses to mean that it is no longer a requirement to seek EPA approval for direct injection to an aquifer so long as we think these conditions will be met. Is the requirement to obtain EPA direct injection approval now waived?
12	51	54	Explanatory Notes	The title of EPA Publication 840 is misspelled.
13	51	54	Explanatory Notes	Please include the reference/document number for the guidelines referenced in bullets 3 to 6.

14	51	55	Non-aqueous phase liquid	This clause clearly states that an occupier of a premises where NAPL exists must clean it up. This seems very unfair and there is no provision for exemption where the source is from off-site. There is no provision for a site where there are multiple tenants, some of which may be completely unrelated to the source. I can name many corner blocks with a petrol station, pizza shop, Subway, etc. - only one of these tenants are likely to have caused the NAPL, but the clause does not provide for any exemptions.
15	54	59 (1)	Groundwater quality restricted use zones	Rather than saying "an existing level of contamination of groundwater precludes one of more beneficial uses" , say pollution (as it will hopefully be defined in the Definitions section).
16	55	59 (3)	Groundwater quality restricted use zones	Why would a person be required to clean up groundwater within a GQRUZ. Currently, the only way a GQRUZ is determined is following a CUTEF determination (i.e. groundwater has already been cleaned up to the extent practicable). Clause does not make sense. Mind you, there should be provision for a GQRUZ to be applied immediately when pollution is identified, not months or years after the fact (when the polluter finally gets around to cleaning it up, or has spent years arguing with the auditor that natural attenuation will do the trick).
17	55	59	Explanatory Notes	Publication (Information Bulletin) 862 does not have the word Guideline in its title. The publication is also 16 years old and surely needs updating.
18	57	Sch 1 (2)	Surface water segments	Figure 1 does not show all of the surface water segments that are described in Clause 3 (e.g. the Urban segment is missing). Figure 1 is also small and difficult to read. When all segments are added can this figure be produced in at least A4 and also provided as an electronic file for use in GIS. EPA could also put it up on a website for public access.
19	59	"Sch 1 3 (3) (e)"	Segment definitions	This clause is very unclear.
20	61	Sch 1 (3)	Segment definitions	In the Explanatory notes that it is identified that the Urban segment excludes the mainstem (trunk) of the Yarra, Maribyrnong and Werribee Rivers, but it is not specified what level of protection applies to the mainstem of these rivers.
21	62	Sch 2 (1)	The beneficial uses of water	Please denote in the text and on Table 2 and Table 3 that the asterisks indicate specific exclusions that are set out in Table 5.
22	63	Table 1	Beneficial Uses for Water	Should there also be an "and" following the second to last bullet point in the first row?
23	63	Table 1	Beneficial Uses for Water	Agriculture and Irrigation are two different beneficial uses and should be shown on two separate rows.
24	64	Table 2	Beneficial Uses for Groundwater	Avoid the confusion and call the beneficial use "Agriculture and irrigation (irrigation)" just "Irrigation and "Agriculture and irrigation (stock watering)" just Stock Watering.
25	66	Sch 2 (1) Table 3	Table 3: Beneficial Uses for Inland Waters	It is still unclear at this point what the protected beneficial uses are for the mainstem of the Yarra, Maribyrnong and Werribee Rivers.
26	66	Sch 2 (1) Table 3	Table 3: Beneficial Uses for Inland Waters	What does the * mean (in the aquatic reserves / human consumption of aquatic foods box)?
27	67	Table 4	Beneficial uses for marine and estuarine waters	In the "Water dependent ecosystems and species that are in:" box, delete "in".
28	67	Table 4	Beneficial uses for marine and estuarine waters	It is understood the asterisks relate to specific exclusions (as per Clause 16 (3)). To reduce confusion, please include corresponding notes for the asterisks with the table.
29	67	Table 4	Beneficial uses for marine and estuarine waters	The difference between "Traditional Owners' and Aboriginal Victorians' cultural values" and "Cultural and spiritual values" should be clarified. It is not explicit in the SEPP why there are different beneficial uses for indigenous Australians and people of other cultures/religions that have cultural or spiritual connections to water.

30	67	Table 4	Beneficial uses for marine and estuarine waters	Aesthetic enjoyment is not defined (but primary contact and secondary contact are).
31	70	Sch 2 (1) Table 5	Table 5: Exclusions to Beneficial Uses in Surface Waters	A segment called "Estuaries and Inlets" is listed in this table. Table 4 and Sch 1 (3) only identified an "Estuaries" segment.
32	71	Sch 3 1 (3)	Environmental quality indicators and objectives	As in other clauses, why don't you refer to the existing guidelines or approved protocols (to avoid confusion)?
33	72	Explanatory notes	Environmental quality indicators and objectives	This reads like there can now be far less CUTEF determinations (which would be good)
34	73	Sch 3 (2) (5)	Inland Waters	Sub-clause 5 identifies that the objectives for Central Foothill and Coastal Plains [which are slightly to moderately modified ecosystems] apply to the mainstem of the Yarra, Maribyrnong and Werribee Rivers. This was not mentioned previously in Schedule 2.
35	79	Sch 3 (5) Table 1	Table 1: Environmental Quality Indicators and Objectives for Rivers and Streams	The lowlands of the Yarra, Maribyrnong and Werribee Rivers are identified as being in the Urban segment, but there is no reference to the mainstem of these rivers not being in the Urban segment.
36	89	Sch 3 (6) (2-3)	Water based recreation	The short and long term objectives may be suitable for a surface water body where the protected beneficial use exists (e.g. at a beach or in a lake which has designated swimming areas), however, it is unclear how this would apply to surface water bodies that are not used for swimming (although the beneficial use may be protected) but may need to be assessed under a regulatory context, such a stream running through a property that is subject to a 53X Environmental Audit. It is not reasonable to expect that a rolling dataset of minimum number 60 samples be obtained for a surface water body which is not being used for the protected beneficial use. The requirement for assessment over "general" and dry weather conditions may also not be relevant in that context.
37	90	Sch 3 (6) (4-5)	Water based recreation	Again, whilst this may be suitable for beaches and other designated swimming areas, it is difficult to see how the samples collected "during periods of high recreational use" could be applied to an assessment, such as during a 53X Audit, of a surface water body where the beneficial use (although protected) does not exist and is not relevant.
38	90	Sch 3 (6) (6a and 7b)	Explanatory Notes	Do you mean to make reference to NHMRC 2008 in either of these clauses?
39	90	Sch 3 (6) (6a)	Water based recreation	What are the objectives?
40	91	Sch 3 (6)	Explanatory Notes	The title of the NHMRC document is <i>Guidelines for Managing Risks in Recreational Water</i> and it was published in 2008, not 2009.
41	95	Sch 3 (7) (2) and (3)	Groundwater	These clauses are exactly the same, so why do we need both?
42	95	Sch 3 (7) (5) and (6)	Groundwater	These clauses are exactly the same, so why do we need both? See also comment 24 above.
43	96	Sch 3 (7) (8)	Groundwater	Sub-clause 8 says that groundwater must not be affected to the extent that the level of any water quality indicator is greater than the level of that indicator specified for water based recreation (primary contact recreation) for surface water in this policy . Please clarify how EPA expects this groundwater beneficial use to be assessed when the surface water quality objectives require collection of a rolling dataset of minimum 60 samples (for the long term objective) and single samples during high recreational use and dry weather (for the short term objective). These prescribed sampling densities do not appear to be relevant for groundwater.
44	96	Explanatory notes	Last paragraph	If it's important enough then why not specify this in the policy?

45	General	General	Numbering	The draft SEPP does not use consistent number formatting (i.e. 1,500 and 1500 and 1 500)
46	General	General	Authority	Should the "Authority" be defined?