

Statutory Authorities Review Committee on the operations of the Environment Protection Authority, particularly regarding public notification protocols of contamination, 8 September 2014

Opening remarks by Tony Circelli, Chief Executive, EPA

As the recently appointed Chief Executive of the EPA, I am pleased to appear before the Committee.

This Inquiry, which began in 2011, was initiated by the Legislative Council through concerns from the media and broader community with regard to public notification protocols for managing site contamination, recognising also that the terms of reference for the Inquiry included a broader review into the operations of the Environment Protection Authority

The EPA took the opportunity to provide evidence on the EPA's overall functions, governance and finances, as well as specific information regarding the regulation of site contamination and provision of information.

It was pleasing to note that after an extensive review, the Committee's recommendations focussed more on continuation of improvement, not wholesale changes. That said, we have and continue to look at how legacy issues are managed.

Like any good organisation, the EPA has always pursued a culture of continual improvement, and since 2011 we have actively sought ways to improve the manner in which we provide information to the community and stakeholders.

As explained to the Committee at that time, the EPA revised and clarified its site contamination public communication statement as an outcome of the Edwardstown site contamination issue. It has continued to make this available on the EPA website as an open, readily available reference as to what the EPA expects of itself. The point of change in the protocol at that time was related to more proactive communication when the EPA receives a validated new notification from specified persons under the Act, who become aware of the existence of contamination of groundwater. This feature under the Act is fundamental as it presents a potential new source of site contamination that may need further investigation, assessment and remediation.

The protocol in relation to other parts of the assessment and remediation process for managing legacy issues remains unchanged.



A fundamental principle within the protocol is to ensure that residents living in areas potentially impacted by site contamination are the first priority and are directly advised by the EPA, and subsequently that those people not directly affected are notified through broader communications including through the media. We have learnt that people expect to hear from the EPA first. When this does not happen, that basic element of trust between ourselves and the community is immediately harmed.

The protocol states that during the course of investigations, the EPA's method of communicating is tailored to the level of, and evidence of, any risk to the public. Whenever possible, should the risk profile not be immediate, our experience tells us that it is essential that the community is provided a consistent, clear explanation of what we have found and what that means for them. Sometimes issues may present an immediate threat, and emergency provisions are then necessary

With regard to site contamination in particular, since 2009, the EPA has received approximately 520 notifications relating to groundwater contamination in South Australia and has undertaken public communication notices for approximately 330 sites since May 2011, when the protocol was put into place. The vast majority of these have seen an effective communication and engagement approach with the community, ensuring information is made available to the community and other stakeholders in an appropriate manner.

The regulation of sites that require extensive and ongoing assessment due to their complexity (with respect to contaminants, potential exposure pathways and geological features) require tailored communications. We maintain a copy of all letters and media releases on the EPA's website to allow people to view the history and progression made at each site. A mail out will include frequently asked questions and health information if relevant. Residents can expect urgent information to be communicated face-to-face and followed up with written information. The estimated number and reach of communications for these assessments is vast and demonstrates the EPA's ongoing commitment to ensure the community is aware of information during the course of extensive and often long assessment timeframes.

We have also made efforts to ensure all information available on the public register post July 2009, when the new site contamination legal provisions came into effect, are easily accessible through our website. The accessibility of this information is extremely important to the EPA and something that we keep promoting to the public and media.

As the EPA stated in its original 2011 submission, it is a fact that in all developed countries around the world, sites have been contaminated through industrial and other practices that were either not subject to environmental regulation, or not regulated as stringently as they are today. In many cases, the contamination was caused by a lack of understanding of the potential long-term effects on the land in question.

The management of legacy contamination issues is a relatively new discipline. All stakeholders, and in particular the EPA, will continue to learn and build knowledge, be it the field of assessment, remediation or communication. It is fair to say that this is an issue that will be with us for many, many years to come as more sites are identified.

South Australia is recognised as a leader in managing site contamination; staff from the South Australian EPA have been invited to other countries on numerous occasions to present on our legislative approaches and techniques and we have also hosted representatives from other countries to provide similar information. SA will represent Australia in an upcoming Asia Pacific Conference on Site Contamination, as well as attending the annual Battelle Conference in the USA in 2013.

South Australian representatives also presented at the 5th International Contaminated Site Remediation Conference ‘CleanUp 13’ in Melbourne to present on sustainability and remediation issues, including community engagement. The EPA featured a presentation on the Allenby Gardens/Flinders Park Groundwater Prohibition Area. South Australia is the only Australian jurisdiction to have this type of legislative provision, so there was widespread interest particularly from our regulatory peers as to how the prohibition provisions work.

Having the Cooperative Research Centre for Contamination Assessment and Remediation of the Environment (the CRC CARE) within South Australia has allowed the EPA to develop a strong partnership with world leading experts, allowing for the sharing of new information and assisting us in being at the

forefront of this field. The EPA has a number of senior officers, including myself, that participate on a range of projects and policy forums in this well respected national research facility.

I note that other states also have an ongoing program to review and build their capability to deal with legacy contamination issues. New South Wales is undertaking a review of site contamination, which includes specific reference to a number of site contamination issues, following an Audit Office of New South Wales' review into the Management of Contaminated Sites. Victoria has recently completed an international review of programs and approaches used.

Whilst these reviews assess site contamination from the perspective of the jurisdiction's relevant legislation, they reflect the ongoing efforts to build on their capabilities to provide better outcomes for the environment and the community.

We have a strong relationship with the NSW and Victorian EPAs and other EPAs, and along with many other common regulatory challenges, we will be working with them on reforms for the future. As Chairperson of the national Australasian Environmental Enforcement and Regulators Network, and along with the newly established national Heads of EPA Network, these networks will be utilised to ensure that as a nation we work together on building our collective capabilities, knowledge and systems to best manage environment protection challenges.

In summary, the EPA has with other relevant agencies such as the Department of Health and Ageing, been working under a systematic legal framework, with a range of powers to better deal with legacy contamination issues. This system has been in place for five years.

A review of recent site contamination issues is also warranted and I hope to provide more details on that in our forthcoming hearing on the Clovelly Park issue.

We have come a long way since the review by SARC in 2011 and there has been good progress and achievement in the practices put in place to better communicate with the public. However to admit that there were not more learnings to be had would be very naive. The EPA, under my leadership, will be using the learnings of these first five years; the first five years that as a community we have made a deliberate effort to start addressing the legacy contamination issues of the past, and one, like all other major cities in



Australia and around the world, will continue to require dedicated effort for many years to come.

With regard to the specific recommendations of the Committee, I provide the following.

Recommendation 1

As stated in the submission, development to implement an online public register is underway. The important component of this development is that the uploading of information will be automated, saving time within the EPA and also allowing it to be expanded in the future when the opportunity arises. We continue to build the public register based on the demand that we have from the community.

Recommendation 2

The responsibility for this issue resides with the Department of Environment, Water and Natural Resources which has a state groundwater database which currently holds information of over 252,000 registered wells. Of these, approximately 147,000 are defined as water wells, meaning they were originally drilled as a water well or subsequently converted to a water well. The database is maintained by DEWNR and is available via the WaterConnect Groundwater Data website.

As stated in the Government's initial response to the Committee's recommendation, it is supportive of the registration of unregistered bores, but there are considerable challenges in identifying the location of old wells for which there is no knowledge of their precise location or no records of their existence. There are also likely to be public concerns about any approaches that might require officers to enter private property to find and or confirm the existence of an unregistered bore.

The registration of unregistered wells is encouraged through the well construction permit, water allocation planning and compliance processes. Voluntary disclosure by existing and new property owners is encouraged.

Recommendation 3

The EPA has a strong focus on making itself available to the community, particularly in recent years. As was indicated within the submission, it is important to the EPA that it actively undertake consultation and engagement on many different levels – with the community that are potentially impacted



by specific pollution issues, and with broader community, industry and government stakeholders to understand their concerns and to listen to their advice on emerging issues or opportunities.

The submission provided some detail in relation to the communication and engagement that has been undertaken recently by the EPA, all of which is underpinned by the EPA Communications and Engagement Framework, which sets out the role that communications and engagement plays in supporting the EPA to deliver against its strategic priorities identified in the EPA's 2013-15 Strategic Plan. The Framework also guides how the EPA interacts with stakeholders, how it promotes best practice communications and engagement within the EPA and how it develops internal capabilities.

This is led by the Board of the EPA which, by the end of 2014, will have undertaken approximately 12 consultation and engagement sessions since March 2013. This is an unprecedented number of sessions that have allowed it to communicate with and listen to representatives from business, local government, community groups, regional and metropolitan groups and representative bodies.

Recommendation 4

The EPA has been aware of this issue for many years, and the Committee itself noted that this is an ongoing issue. Evidence provided to this Committee during this Inquiry made it clear that there is still much confusion as to which authority deals with local environmental nuisances.

As stated in its initial response to the Committee's recommendations, the Government agrees that local government has a fundamental, on ground role to play in the management of local environmental nuisance issues. In light of the recommendation from the Statutory Authorities Review Committee, the EPA, in March 2013, released a discussion paper to the Local Government Association for use in consulting with its member councils.

Work on the drafting instructions for the Local Nuisances Bill continues. Further meetings with the Local Government Association, Councils and other stakeholders such as South Australia Police, KESAB, and Department for Health and Ageing are planned for coming months to refine drafting instructions so that a draft Bill can be developed for the broader consultation.

Since the enquiry, the Local Government Association has established a Local Excellence Expert Panel to establish a vision for the 'Council of the Future'.



This culminated with the publication of the report, Strengthening South Australian Communities in a Changing World ‘The Council of the Future’, in December 2013. A recommendation of that report was that the responsibility for investigating and resolving matters of local environmental nuisance be accepted as part of the function of local government on condition that the EPA provide support in the form of expertise and equipment.

The EPA sees this as a positive step forward in progressing what has been an ongoing and complex issue.

Recommendation 5

As stated in the Government’s initial response to this recommendation; one of the functions of the EPA as listed in the Environment Protection Act 1993 is to “facilitate the pursuit of the objects of this Act by Commonwealth, State and local government bodies, the private sector and the public” 13(1)(d). The Government considers that this places the appropriate obligation on the EPA, and all relevant bodies that have responsibilities under the Environment Protection Act 1993, to promote education, involvement in decisions and, in particular, the provision of information.

Conclusion

The EPA is aware that an environmental regulator needs to be trusted, credible and seen as an authority on issues within its responsibilities. This enables confidence for communities that the right decisions have been made for them and the environment. This is a priority for me as Chief Executive, the Board of the EPA, and I say with much confidence, by all that work for the EPA. We work and devote our professional careers for the benefit and wellbeing of our community.

Dealing with site contamination is something that regulators throughout the world are continually developing and relying on better and improved science and standards. Whilst recognising the many successful outcomes achieved by the EPA, I am committed to an organisation that listens, learns, and adapts.

As I said at the opening of my statement, I am pleased to appear before the Committee and welcome the opportunity to respond to any questions Members may have.

Thank you.

