

**Submission
No 10**

**EXAMINATION OF AUDITOR-GENERAL'S PERFORMANCE AUDIT
REPORTS FEBRUARY 2018 - JULY 2018**

Organisation: NSW Environment Protection Authority (EPA)

Date Received: 14 August 2019



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Mr Greg Piper
Chair, Parliamentary Accounts Committee
Legislative Assembly

By email: pac@parliament.nsw.gov.au

Dear Mr Piper,

Auditor General's performance audit report – Regulation of water pollution in drinking water catchments and illegal disposal of solid waste

Thank you for the opportunity to provide an update on the Environment Protection Authority's (EPA) response to recommendations from the Auditor General's performance audit of the regulation of water pollution in drinking water catchments and illegal disposal of solid waste.

The EPA has completed the template Implementation of Recommendations arising from the performance audit. All seven recommendations have been completed. Please find attached a copy of the template with actions taken for each recommendation.

As part of the implementation of the response to recommendations, the EPA has been afforded the opportunity to examine its regulatory practice. The EPA has, as part of its regulatory assurance and performance framework, developed continuous improvement practice to:

- Better identify risks that could impact the delivery of outcomes
- Capture best practice to ensure that it can be repeated
- Identify and implement improvements to its regulatory practice
- Strengthen the governance of the EPA's regulatory practice

This approach ensures that the EPA continues to deliver reliable and consistent environmental regulatory outcomes to protect human health and the environment.

Yours sincerely

 14/8/19

MARK GIFFORD PSM
Acting Chief Executive Officer
Environment Protection Authority

IMPLEMENTATION OF RECOMMENDATIONS

Environment Protection Authority

Regulation of water pollution in drinking catchments and illegal disposal of solid waste

Recommendation	Accepted or Rejected	Actions to be Taken	Due Date	Status (completed, on track, delayed) and Comment	Responsibility (Section of agency responsible for implementation)
<p>1 By 31 December 2018, to improve governance and oversight, the EPA should:</p> <p>1. implement a more effective performance framework with regular reports to the Chief Executive Officer and to the EPA Board on outcomes based key result areas which assess its environmental and regulatory performance and its trends over time.</p>	Accepted	<p>The EPA will review its current performance framework, analyse any gaps and implement improvements to ensure that the EPA can better assess its environmental, regulatory performance and trends over time.</p> <p>The EPA will:</p> <ul style="list-style-type: none"> • establish a governance and assurance function, independent of the operational functional areas within the EPA, to provide oversight of regulatory activities including monitoring, reviewing and reporting of these. • document a clear assurance and governance framework. • establish additional outcomes based indicators and reporting, including demonstrating the outcomes of both regulatory and non-regulatory actions; and • improve reporting to the EPA Board, Chair and CEO and EPA Executive. 	31 December 2018	<p>Status: Complete</p> <p>The Environment Protection Authority (EPA) has established a regulatory assurance and performance function and framework.</p> <p>The EPA has implemented improvements to reporting that increase transparency to the EPA Board, the Chief Executive Officer and the EPA Executive</p>	Corporate Services Branch – Regulatory Assurance and Performance Section
<p>2 By 30 June 2019, to improve consistency in its practices, the EPA should:</p> <p>2. progressively update and make accessible its policies and procedures for regulatory operations, and mandate procedures where necessary to ensure consistent application.</p>	Accepted	<p>The EPA has commenced a review of its operational regulatory policy and procedures to ensure that they remain current and address operational requirements. The review will also identify where there are gaps and inform the development and implementation of new policy and guidance to respond to these.</p> <p>As part of the review, the EPA will:</p> <ul style="list-style-type: none"> • Ensure that the policies and procedures are subject to a regular review schedule so that they remain current and valid. • Develop and implement a standard for communication and training for staff in relation to new and amended policies and procedures. • Ensure that all operational policies and procedures are centrally located and made available via the EPA's intranet, • Amend the EPA's training strategy to include mandatory training and/or accreditation (where it is better suited) for all officers to drive consistent application of policies and procedures. • Ensure that policies and procedures are linked to the EPA's performance framework (where appropriate) to improve data collection and reporting for the EPA Board, Chair and CEO. 	30 June 2019	<p>Status: Complete</p> <p>The EPA has established a Regulatory Officers Library which is available to all EPA employees via the EPA Intranet – InSite. This library houses all regulatory policy, process, guidance and factsheets relating to regulatory work at the EPA. New and updated policy and processes are communicated to staff. The EPA has a training framework that includes accreditation requirements.</p>	Regulatory Reform and Advice

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<p>3 By 30 June 2019, to improve consistency in its practices, the EPA should:</p> <p>3. implement internal controls to monitor the consistency and quality of its regulatory operations</p>	Accepted	<p>The EPA currently monitors consistency and quality of its regulatory and operational functions through:</p> <ul style="list-style-type: none"> • Quarterly reports to the EPA Board, Executive, Regulatory Practice Sub-Committee and Senior Management Group. Reports are currently generally activity based. • Branch plans, aligned with the EPA's strategic plan. • Board, Executive and Senior Management meetings. • Weekly issues meeting. • Staff performance and development plans. • The EPA Board's annual Regulatory Assurance Statement. <p>The EPA is committed to further improvements to its monitoring of regulatory operations. The identified improvements include:</p> <ul style="list-style-type: none"> • Reporting on compliance with controls, policies and procedures. • Measurement of outcomes based on regulatory activities and actions. • Introduction of balanced scorecards based on the EPA's strategic and branch plans. • Reporting on validation of, and regulatory response to, industry self-reported data. • Monitoring of regulatory outcomes associated with operational activities, including site inspections and compliance audits. • Improved information management through the implementation of a data governance framework and implementation of a new case management system as part of the EPA's inflight Regulatory Systems Transformation program. 	30 June 2019	<p>Status: Complete</p> <p>The EPA's Regulatory Assurance and Performance (RAP) Framework provides a mechanism for the EPA to monitor consistency and quality of its regulatory operations through monitoring, evaluation and reporting. The RAP Framework includes Gateway reviews, health check and focused process reviews.</p> <p>The EPA has finalised its Information Governance Framework (IGF). The IGF aligns with NSW Government best practice requirements for information governance and management.</p>	Corporate Services Branch – Regulatory Assurance and Performance Section and Business Information Systems Section

4	<p>By 30 June 2019, to address worsening water quality in Lake Burrangorang the EPA should:</p> <p>4. (a) review the impact of its licenced activities on water quality in Lake Burrangorang and</p> <p>(b) develop strategies relating to its licenced activities (in consultation with other relevant NSW Government agencies) to improve and maintain the lake's water quality.</p>	Accepted	<p>The responsibility for the management and regulation of water quality in the drinking water catchments is set out in the <i>Water NSW Act 2014</i> (Act) and the <i>Water Management Regulation (2013)</i> (Regulation). WaterNSW is a state-owned corporation responsible for setting the strategic direction for protecting the Sydney Catchment areas. The responsibilities under the Act and Regulation lie with WaterNSW.</p> <p>WaterNSW is a state-owned corporation responsible for setting the strategic direction for protecting the Sydney Catchment areas. The responsibilities under the Act and Regulation lie with WaterNSW.</p> <p>WaterNSW's principle objectives include ensuring that the declared catchment areas, and water management works in such areas, are managed and protected so as to promote water quality, protection of public health and public safety, and the protection of the environment. As such, WaterNSW has a key role in the development application and consent process. Under the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 WaterNSW is required to consider if a proposed activity will have a neutral or beneficial effect on water quality. Development applications provided under the <i>Environmental Planning and Assessment Act 1979</i> also allow for additional consideration by WaterNSW to further regulate the activity or unexpected impacts.</p> <p>Consideration by WaterNSW to development applications is required irrespective of whether an applicant will be required to hold an environment protection licence as part of any development consent.</p> <p>In the Sydney catchment area, a broad range of residential, commercial and agricultural development and activities are undertaken that can pose a risk to water quality. The EPA's primary regulatory oversight is triggered where a development proposal includes a 'scheduled activity' under the <i>Protection of the Environment Operations Act 1997</i>, thus requiring an environment protection licence. Under the integrated development provisions of the <i>Environmental Planning and Assessment Act 1979</i> the EPA provides general terms of approval to the consent authority which are then incorporated into the development consent conditions. The development consent conditions are included in any subsequently issued environment protection licence. The EPA is committed to undertaking a review of environment protection licences that have conditions to discharge into the Lake Burrangorang catchment.</p> <p>As an outcome of the review the EPA will also develop and implement strategies, relating to the setting, reviewing and maintaining of licence conditions for licenced activities, that may impact on the water quality of Lake Burrangorang, The EPA will work with other NSW Government agencies, where appropriate, to ensure licence conditions will protect water quality.</p> <p><i>In addition, if there is any broader review relating to the issue of water quality in Lake Burrangorang the EPA would be happy to work alongside all other agencies involved.</i></p>	30 June 2019	<p>Status: Complete</p> <p>The EPA has completed a review of the potential impact of licensed activities on the water quality in Lake Burrangorang (the lake).</p> <p>The review was specifically designed to consider the potential impact on the lake itself over longer periods of time, the review did not seek to review impacts on local waterways.</p> <p>The review found that EPA licensed premises pose a negligible potential risk to the water quality in Lake Burrangorang.</p>	Regulatory Reform and Advice – Technical Assessments
5	<p>To improve compliance monitoring, the EPA should implement procedures to:</p>	Accepted	<p>Annual returns are required to be submitted to the EPA by licensees as part of the conditions attached to their environment protection licence. The annual return reports on the licensee's level of compliance with conditions attached to their licence and specific legislative requirements regarding the existence and testing of their pollution incident</p>	30 June 2019	<p>Status: Complete</p> <p>The EPA has removed the ability to download hardcopy templates and mandated the submission of self-reporting</p>	Hazardous Incidents and Environmental Health – Learning

Recommendation	Accepted or Rejected	Actions to be Taken	Due Date	Status (completed, on track, delayed) and Comment	Responsibility (Section of agency responsible for implementation)
<p>5. by 30 June 2019, validate self-reported information, eliminate hardcopy submissions and require licensees to report on their breaches of the Act and associated regulations in their annual returns</p>		<p>response management plan (PIRMP), load based licensing and risk based licensing (specifically the implementation of environment management systems).</p> <p>The EPA has an ongoing program that encourages licensees to submit their annual returns via the EPA's digital licensing portal (eConnect EPA). The EPA has stopped sending annual return hardcopy templates with annual return correspondence reminding licensees of their reporting obligations. All communications to licensees has been updated to align with behavioural insights methodology. The EPA will be removing the ability to download hardcopy annual returns from the EPA's website in December 2018.</p> <p>The EPA has commenced a review of the annual return management policy and as part of this review will consider improvements to procedures and guidance that mandate the considerations of regulatory actions for:</p> <ul style="list-style-type: none"> • late submission of the annual return; and • the submission of false and misleading information. <p>The EPA currently reviews the information provided in all annual returns to inform ongoing regulation of licenced activity. The information provided is considered in accordance with the EPA's Compliance Policy and where appropriate, regulatory action is taken in response to non-compliance.</p> <p>The EPA will, as part of the review, provide policy advice for all staff on the management of licensee misreporting of non-compliances with licence conditions and breaches of the Act via their annual return.</p> <p>This advice will provide clarity for staff on the regulatory action(s) that must be considered as part of the assessment of the annual return information.</p> <p>Additionally, the EPA is exploring opportunities to centralise the initial review of compliance reporting to improve validation of self-reported information and data will focus effort on misreporting. The EPA will also ensure industry self-reporting obligations align with risk based regulatory principles. The EPA will mandate submission of annual returns electronically via the EPA's digital licensing portal (eConnect EPA).</p>		<p>data via its digital reporting portal – eConnect.</p> <p>The EPA has completed its review of annual return compliance and is currently implementing the review recommendations.</p>	<p>and Regulatory Capability Unit</p> <p>Regulatory Reform and Advice Branch</p> <p>Corporate Services Branch</p>

Recommendation	Accepted or Rejected	Actions to be Taken	Due Date	Status (completed, on track, delayed) and Comment	Responsibility (Section of agency responsible for implementation)
<p>6 To improve compliance monitoring, the EPA should implement procedures to:</p> <p>6. by 31 December 2018, conduct mandatory site inspections under the risk-based licensing scheme to assess compliance with all regulatory requirements and licence conditions</p>	Accepted	<p>The risk based licensing scheme mandates the minimum inspection requirements for a licensed premise based on the risk associated with the premise. As part of the scheme, every licensed premise undergoes a five-yearly risk based assessment. The current policy and supporting procedures dictate the requirements for this five-yearly risk based assessment and the minimum inspection frequency (twice yearly for high-risk facilities, once annually for medium risk facilities and once every three years for low risk facilities).</p> <p>When it was introduced, the EPA committed to review the scheme three years after implementation.</p> <p>This review has commenced and is scheduled for completion in June 2019.</p> <p>As part of this process, the EPA will develop and mandate clear procedures and guidance relating to inspections conducted as part of the risk based licensing scheme. These will include:</p> <ul style="list-style-type: none"> • Minimum standards and guidance for inspections conducted as part of the risk-based licensing scheme. • Mandated timing of these inspections. • A process that ensures validation of industry self-reported data. • Additional guidance relating to regulatory actions and any follow up that should be considered as part of the inspection process and findings. • Mandatory training and/or accreditation for staff conducting the inspections. 	31 December 2018	<p>Status: Complete</p> <p>The EPA has mandated site inspections under the risk-based licensing scheme for all licensed premises. Further continuous improvement activities for the risk-based licensing scheme are underway.</p>	Regulatory Services Division and Regulatory Reform and Advice Branch

Recommendation	Accepted or Rejected	Actions to be Taken	Due Date	Status (completed, on track, delayed) and Comment	Responsibility (Section of agency responsible for implementation)
<p>7 By 31 December 2018 to improve enforcement, the EPA should:</p> <p>7. Implement procedures to systematically assess non-compliances and breaches of the Act and to implement appropriate regulatory actions.</p>	Accepted	<p>The EPA has commenced a review and assessment of current procedures and guidance to ensure alignment with the EPA's Compliance Policy and regulatory requirements.</p> <p>The EPA will implement improvements that ensure there is greater transparency of the decision-making processes relating to regulatory actions taken (or not taken) for non-compliances. This will improve the EPA's ability to assess environmental and regulatory performance over time. As part of this review and assessment the EPA will ensure there are:</p> <ul style="list-style-type: none"> • Appropriate procedures and guidance for all operational staff that reinforces a risk-based approach to non-compliance and regulatory response that acts as a deterrent to reoffending, and • Appropriate monitoring mechanisms in place that will be used to assess any inconsistencies in the response to non-compliances and breaches of the Act and inform additional communication and training requirements for operational staff. <p>As an outcome of the review and assessment, the EPA will implement new procedures and guidance for operational staff. This will include greater clarity for officers in their consideration of regulatory actions for non-compliances and any identified licensee breaches of the Act. These procedures and guidance will complement the EPA's Compliance Policy and their use will be mandated</p>	31 December 2018	<p>Status: Complete</p> <p>The EPA has:</p> <ul style="list-style-type: none"> • Implemented procedures to address non-compliances in annual returns • Reviewed operational policies and procedures and guidelines and established a Regulatory Officers Library • Implemented guidance on applying the EPA's risk-based licensing scheme including inspection requirements, licence review procedures • Reviewed the case management system for consistent operation and compliance with EPA policies and procedures. 	<p>Regulatory Reform and Advice Branch</p> <p>Corporate Services Branch</p> <p>Regulatory Assurance and Performance Branch.</p>

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