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Our Ref: 0104_2019_0905
File No.: CM_CS_100_Submissions_A-F_105_DWER



September 5, 2109

Mr Michael Rowe
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Via email : compliancepolicy@dwer.wa.gov.au

Dear Mike

DWER – Compliance and Enforcement Policy: draft for public comment – Not Supported

The Peel-Harvey Catchment Council (PHCC) is the peak community based, Natural Resource Management (NRM) body working across the 1.1 million hectares of the Serpentine, Murray, Hotham, Williams and Harvey River catchments. Our Mission is that *we are key agents for change towards a healthier Peel-Harvey catchment. As environmental stewards we will encourage and enable effective catchment management to create a healthier natural environment in the Peel-Harvey by building community education and capacity, influencing and leading critical thought and environmental pride, and exemplifying and implementing best practice.*

The PHCC places high importance on compliance and enforcement to ensure legislation, such as the Environmental Protection Act and Waterways Conservation Act, is effectively (and efficiently) implemented to ensure the Acts fulfil their purpose in protecting and conserving our natural assets, many of which are endemic and under numerous human-induced threats.

Having reviewed DWER's draft Compliance and Enforcement Policy (Draft Policy) PHCC provides the following submission.

General

As a general comment, the PHCC is disappointed with the Draft Policy. It fails to set out in any detail DWER's approach to compliance and enforcement. The wording in the Draft Policy is overly vague and contains very general motherhood statements. The PHCC is concerned that this draft Policy presents as a weaker document than the existing policies which it is replacing.

The Draft Policy contains mostly in-principle statements. There is very little meaningful detail or substance in the Draft Policy.

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*We acknowledge the Noongar people as Traditional Custodians
of this land and pay our respects to all Elders past and present*

Failure to be transparent

The Draft Policy lacks transparency. The Draft Policy fails to explain:

- what risk-based methodology will in fact be applied
- how risks will be applied to compliance and enforcement actions (see example below)
- when conditions will be reviewed
- what monitoring regimes are required in what circumstances
- frequency of assessing monitoring data
- triggers for when non-compliance will be actioned

Further, the PHCC believes that the publication of monitoring data is critical for ensuring transparency and accountability. The PHCC urges DWER to consider including the publication of data in its policy.

By way of example, the WQIP (Environmental Protection Authority, 2008, Water Quality Improvement Plan for the Rivers and Estuary of the Peel-Harvey System - Phosphorus Management, Perth, Western Australia) sets targets for the long-term health of the estuary with a need to reduce phosphorus input to the estuary by 50% or at least 75 tonnes per annum. Ensuring zero discharge from licenced agricultural premises (WQIP Management Measure 4.1.5) is an important instrument towards achieving this target. The current reports available to the public provide no useful information to gauge local (catchment scale) effectiveness of DWER's compliance activities in regard to these licensing conditions. The Draft Policy lacks detail as to how the current situation will be improved, so that the public can have confidence that, in this example, prescribed premises are not contributing to eutrophication.

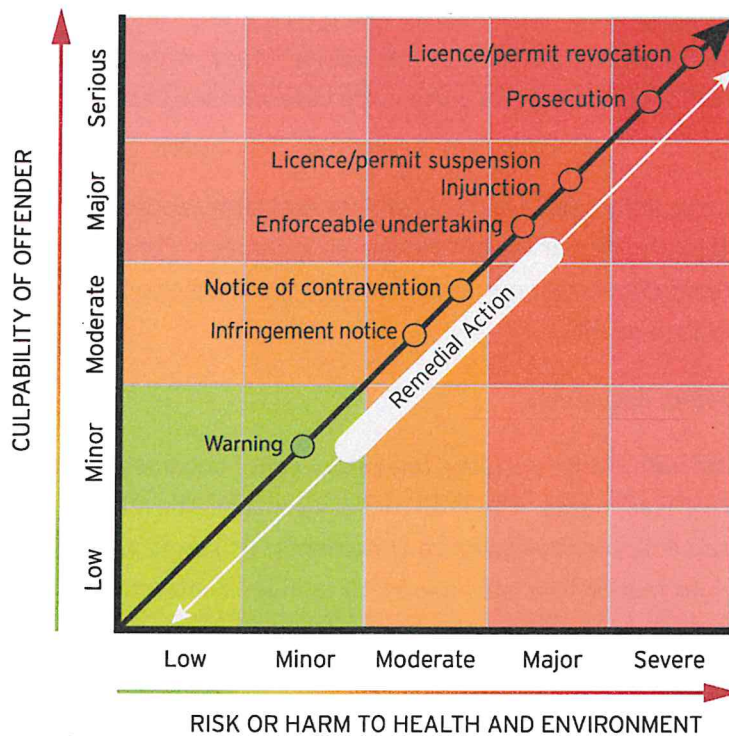
Failure to meet contemporary regulatory standards

The PHCC notes that jurisdictions in other States and Territories have far more comprehensive compliance and enforcement policies. The PHCC submits that the Draft Policy fails to explain DWER's compliance and enforcement functions.

An example of best regulatory practice is Victoria's EPA's compliance and enforcement policy (<https://www.epa.vic.gov.au/our-work/compliance-and-enforcement/ce-policy>). Victoria's policy clearly correlates the regulatory enforcement response with risk:-



Title: EPA's approach to targeted enforcement (p. 7 EPA Victoria Compliance and Enforcement Policy)



DWER's Draft Policy, in comparison, fails to explain what actions will be taken by DWER in what circumstances. The Draft Policy fails to explain how compliance, enforcement and approvals are related in the regulatory cycle.

The PHCC urges DWER to consider replacing the Draft Policy with a comprehensive, transparent, contemporary and best practice approach to compliance and enforcement similar to other jurisdictions in Australia.

Failure to protect waterways

For the Peel Inlet and Harvey Estuary specifically, declining water quality has been well documented but little coordinated action has taken place.

The Draft Policy fails to address how compliance and enforcement activities are undertaken with respect to high risk industries (which may or may not be licenced) to protect ecologically sensitive areas such as the Peel-Yalgorup Ramsar Wetlands.

This issue also highlights the ongoing failure by DWER to apply appropriate legislative instruments to protect water quality and our waterways. As a result, no meaningful “compliance” or “enforcement” can be undertaken; we use the Bio-Organics (composting facility at Oakford) case as an example of this. PHCC requires a high level of confidence that DWER’s new Compliance and Enforcement policy will address the shortfalls identified in the O’Brien Report with respect to the Bio-organics composting facility. PHCC does not believe this is the case with the Draft Policy as presented.

The PHCC urges DWER to ensure that enforceable and appropriate regulatory approvals, instruments and tools are applied to protect our waterways and environment. Compliance and enforcement will not be of any benefit to protect our environment if the initial approval or instrument is not appropriate and enforceable.

Failure to align with existing regulatory documents

The Draft Policy clearly fails to align with DWER’s existing regulatory policy documents, including DWER’s Guidance Statement - Risk Assessments. The PHCC notes a considerable difference in drafting style and detail in the Draft Policy to the Guidance Statements. As stated above, the Draft Policy lacks any real, meaningful information to enable the policy to meet its objective.

Thank you for the opportunity to comment. We look forward to further input on the reviewed Draft Policy following DWER’s consideration of submissions during this consultation phase.

Should you have any queries in regard to this submission, please contact Kim Wilson (kim.wilson@peel-harvey.org.au).

Yours sincerely



Jane O'Malley
Chief Executive Officer