

Who is Responsible for Ensuring the NSW Environmental Protection Authority (EPA) Delivers Professional Oversight of Environmental Monitoring and Regulation in NSW?

On 7 December 2014 a storm occurred in the South–East of NSW. Following the storm there was a pink discolouration in Lake Wonboyn. This type of discolouration had not occurred before. Following complaints, the EPA initiated an investigation.

In June 2015 a Report titled “*Sources of suspended sediment in the Wonboyn River catchment*” was prepared by Dr Wayne Cook, a soil scientist with the Office of Environment and Heritage.

In August 2015, the EPA produced a report on the response of the Wonboyn River catchment following intense rainfall. Dr Cook's report was included at appendix 2. On about 2 February 2016, the combined reports were released to selected members of the Wonboyn community.

At a public meeting in Wonboyn on 10 February 2016, the report was presented to concerned stakeholders. Numerous flaws in the report were identified and the NSW EPA staff present committed to revising the report. Issues included:

- The public meeting was conducted with the predominant focus being on the role of forestry roads and harvest operations being the most likely (if unproven) cause of pink discolouration in the Wonboyn Lake.
- Emergency workers, who had recovered a stranded vehicle from the flood waters on 7 December, advised that the Wonboyn River had pink discolouration on 7 December, while Watergums Creek, which drained the forest areas subject to harvesting over the prior 2 years, was much cleaner, with no pink discolouration.
- A local property owner advised the meeting that the one-off pink colouration was a result of the large quantity of pink coloured subgrade material used in the upgrade of the Wonboyn Road, which was completed prior to the December 2014 flood. Most of the spoil was removed by the December 2014 flood and is why this is the only source, which explains why the pink discolouration has not been a problem in floods before or after the 7 December 2014 flood.

Over the following 18 months, there were a number of approaches to the EPA by interested stakeholders, seeking a copy of the revised report. Following ongoing requests by the NSW Shellfish Committee, in August 2017, Michael Hood, Director Forestry, EPA sent letters to the Shellfish Committee and FCNSW with a copy of Dr Cook's June 2015 report.

Consequently, SETA submitted a Government Information Public Access Act application to find out why the EPA had not honoured the commitment to rectify the deficiencies in the original Cook report and the EPA covering report. The documents identified a number of issues, which four years after the Cook report was written, have not been addressed.

On 8 February 2016, two days before the public meeting, Dr Cook emailed EPA staff. Key points included " *After a drive around the area that I thought was an issue, this weekend, I discovered the geology mapping was wrong. Which means the soil mapping is correct. I could not get in there last time to check as the area was closed. Operations are mostly complete in the area now so I could get in there.*

So I am happy for my report to be scrapped as the crux of my concern (an area recently logged) that I thought was the nasty red subsoil, is not. It is granite.



SouthEastTIMBERassociation

On 16 March, two EPA forestry staff provided a six page demolition of Cook's report to senior EPA management, including a copy to Michael Hood. Their comments included:

"There is no evidence to suggest that the sediment plume in the Wonboyn River catchment came from State Forest;

Much of the report is based on the author's opinion. There is little evidence provided to support many of the claims made. Statements should only be made if they can be substantiated by actual evidence;

The author does not appear to have reviewed or analysed compartment specific soil regolith assessments conducted by FCNSW in pre-harvesting assessments;

There was no evidence provided, from State forest tenure, which identified that these "highly erodible" soils had actually eroded following the 250mm rainfall event on 7 Dec 2014;

The author uses the terms erosion risk, regolith, dispersibility and erodibility interchangeably throughout the document. The terms are not interchangeable;

FCNSW is required to use the Emerson Aggregate test, the author considers the Dispersion Percentage test gives a better indication of dispersibility. The test was developed primarily to identify soils that had an inherent risk of tunnelling failure when used in earthworks e.g. farm dams. Its use in a forestry context is not considered relevant or appropriate;

The fact that the rainfall event has not caused erosion of forest roads and crossings indicates that the management of these sites is appropriate;

This is the authors opinion it is not supported by evidence and should not be part of the report;

This is the author's opinion and evidence has not been provided to support this claim;

The final two statements were used on multiple occasions throughout the review.

SETA then wrote to the Environment Minister Upton, on 22 November 2017 to bring this issue to the Minister's attention. No response was received.

SETA met with the then CEO of the EPA on 28 September 2018 and provided a verbal and written briefing on this issue. No further response was received, before the CEO left the EPA two months later.

On 1 March 2019, SETA submitted a 15 page complaint to the Ombudsman. A staff member in the office of the Ombudsman then directed SETA to take the matter up with the EPA.

On 8 May 2019, SETA lodged the complaint with Mark Gifford, acting EPA CEO and EPA board chairman. On 12 July 2019, David Fowler, Acting Chief Environmental Regulator advised SETA that:

"Given the inclusive nature of the site work undertaken, the EPA does not propose to take any further action regarding the status of the report."

The take home message SETA has received is that shoddy investigations and analysis, as well as potentially dishonest and unethical behaviour is acceptable to the senior management in the NSW EPA.

Following a second complaint to the NSW Ombudsman, on 28 November 2019, the Acting Senior Investigation Officer advised:



My inquiries

In addition to reviewing the information you have provided to our office since your previous complaint to us on 1 March 2019, I also made inquiries with the EPA to clarify its response to your concerns. The information we have obtained shows the following:

Dr Wayne Cook's report of June 2015

- The EPA recognises that Dr Wayne Cook's June 2015 report contains the appropriate acknowledgement or disclaimer that "no data or direct evidence exists to confirm or reject the hypothesis that forestry activities within the Lake Wonboyn catchment resulted in a higher than natural suspended sediment loads reaching the lake during the rain event on the 7th of December 2014."*
- The report was obtained for the sole purpose of inquiring into a possible explanation of the colour change of Wonboyn Lake following an extreme and highly localised storm event in 2014.*
- The EPA confirms that the report was not used for any regulatory action against a timber harvester. The EPA also confirms that the report cannot be used to take regulatory action or to prejudice a timber harvester in anyway, especially given its limited purpose and the general statutory bar against enforcement after one year.*
- Apart from the report's stated limitations, the EPA also noted the criticisms of the report alongside the different views offered regarding the cause of the discolouration of Wonboyn Lake. The report is an internal record which is not published on any government websites. As an internal record relevant only to a historical event, it is not considered necessary to 'amend' or 'retract' the report.*

For reasons know only to the Ombudsman's Office, the honesty and ethical issues of EPA staff involved in the release of a flawed report have been ignored. Despite the fatal flaws in the report, the Ombudsman's office has also chosen not to direct the EPA to withdraw the report.

