

## **ENFORCEABLE UNDERTAKING**

*Environment Protection Act 1970 (Vic)*

Section 67D

The commitments in this undertaking are offered to the Environment Protection Authority (EPA) by:

*South East Water Limited*

*ACN: 066 902 547*

*20 Corporate Drive Heatherton VIC 3202 (the Company).*

### **1. DEFINITIONS**

In addition to terms defined elsewhere in this undertaking, the following definitions are used:

**EPA** means the Environment Protection Authority

**Mt Martha STP** means the Company's Sewerage Treatment Plant located at 372 Craigie Road Mount Martha

**the Act** means the *Environment Protection Act 1970 (Vic)*

**the Company** means South East Water Limited (ACN: 066 902 547)

**Undertaking** means Enforceable Undertaking made pursuant to section 67D of the *Environment Protection Act 1970 (Vic)*

### **2. BACKGROUND**

#### **2.1 EPA's role**

EPA is a statutory body created by the Act, which has primary responsibility for the administration and enforcement of that Act.

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#### **2.2 Details of conduct / incident**

An EPA investigation confirmed:

- a discharge of untreated sewage effluent was identified by the Company on 14 September 2008, from a split unmonitored sewer rising main adjacent to the Mt Martha STP;
- the untreated sewage effluent entered and impacted upon the Balcombe Creek and its surrounding environment;
- the Company has estimated the size of the spill, based on observation of the spill site and the surrounding area, to be greater than 40,000 litres; and
- the Company is unable to accurately determine the period of time that the leak went undetected.

### 2.3 EPA's investigation and analysis

EPA analytical data identified:

- the presence of sewage effluent in the Balcombe creek;
- a state of pollution of the waters of Balcombe Creek from sewage effluent; and
- a state of environmental hazard at the Balcombe Creek from sewage effluent.

### 2.4 Alleged Contraventions

EPA alleges the following:

- (a) On 14 September 2008, by the discharge of sewage effluent to the waters of Balcombe Creek and surrounding environment, the Company breached condition 1.1 of its EPA licence EX25939 in contravention of section 27(2) of the Act;
  - Condition 1.1 of EPA licence EX25939 states '*The waste discharge must consist solely of treated wastewater*'.
- (b) On 14 September 2008, by the discharge of sewage effluent to the waters of Balcombe creek and surrounding environment, the Company breached condition 1.2 of its EPA licence EX25939 in contravention of section 27(2) of the Act;
  - Condition 1.2 of EPA licence EX25939 states '*The licence holder may only discharge treated wastewater via the discharge point at the premises to the licence holder's effluent rising main as shown as Discharge Point 1 on the plan of premises in Part 4, ultimately discharging to Bass Strait via Melbourne Water's South Eastern Outfall (Discharge Point 2)*'.
- (c) On 14 September 2008, by the discharge of sewage effluent to the waters of Balcombe creek and surrounding environment, the Company caused or permitted an environmental hazard in contravention of section 27A(1)(c) of the Act; and
- (d) On 14 September 2008, by the discharge of sewage effluent, the Company polluted the waters of the Balcombe Creek in contravention of section 39(1) of the Act.

### 3. KEY OBJECTIVES OF THIS UNDERTAKING

This Undertaking is a binding agreement that aims to:

- Deliver benefits beyond compliance;
- Deliver benefits to the environment and to local communities that have been affected by the alleged contravention;
- Improve the Company's environmental performance by implementing systemic changes that will reduce the likelihood of a similar incident occurring in the future.

### 4. UNDERTAKINGS

Under section 67D of the Act, the Company has offered, and EPA has agreed to accept as an alternative to taking Court proceedings, the following undertakings.

- 4.1 The Company undertakes to determine industry 'best practice' in early warning leak detection for sewer rising mains through the use of surveys and interviews with national and international Water Authorities and Water Associations (the authorities).

Actions that the company will perform to deliver this commitment will include:

- (a) Developing and administering an on-line questionnaire that enables the Company to:
- (i) define current management practices within the Water Industry in detecting leaks from sewer rising mains; and
  - (ii) identify the early warning leak detection systems that are currently within use or are being trialled within the industry.
- (b) Using the information obtained under (a), the Company will conduct interviews with those authorities using or trialling early warning leak detection systems in order to identify industry 'best practice'.
- (c) The Company will collate all information obtained under (a) and (b) above to enable dissemination of the information to the Water Industry.
- (d) Based on the information obtained under (b), the company will identify early warning leak detection systems currently in use or being trialled nationally or internationally that will be suitable for being trialled by the Company.

This undertaking will be completed within 4 months of the date that this Undertaking comes into effect.

**Intended outcome:** Gain a thorough understanding of current industry practice regarding early warning leak detection systems on sewer rising mains and identify options for the future application of early warning leak detection systems on sewer rising mains.

- 4.2 The Company undertakes to review and update its sewer rising main *'renewal and reinspection program'* for all rising mains currently assessed by the Company under its Sewer Rising Main Risk Management Framework (the framework) as having a risk rating of medium risk, high risk or extreme risk.

The framework assigns a risk rating to each rising sewer main based on the consequence of the rising main failing (criticality) and the theoretical probability of failure (condition). Specific actions that the company will perform to deliver this commitment will include:

- (a) Performing 'pipe condition assessment' and / or statistical modelling on each sewer rising main that is assessed under the framework as medium risk, high risk or extreme risk. Pipe condition assessment may include assessment of soil corrosivity, direct pipe scanning and destructive testing of extracted samples of the mains to determine existing pipe conditions. This assessment will be used to refine the 'failure probability' of each main.
- (b) Using the refined 'failure probability' determined in (a) above, the rising main risk rating will be reassessed. The rising main will be programmed for either renewal or reinspection, dependent on the risk rating. The objective of this process is to minimise the likelihood of future pipe failures.

This undertaking will be completed within 6 months of the date that this Undertaking comes into effect.

**Intended outcome:** The Company sets in place a program that will minimise the likelihood of future leaks from rising sewer mains and that delivers an environmental improvement.

- 4.3 The Company undertakes to establish site specific contingency plans for managing future sewer rising main failures on all sewer rising mains classified as medium risk, high risk and extreme risk under the Company's Sewer Rising Main Risk Management Framework.

The contingency plans will include:

- (a) Specifications of the asset (for example type of material constructed, length, location of the rising main and flow volumes);
- (b) Strategy to be employed to mitigate the environmental impacts from a possible pollution event caused by a failure of the sewer rising main;
- (c) Equipment required when responding to a failure of the rising main (for example, size and number of eductor trucks, machinery required to access rising main and materials required);
- (d) A map detailing critical spill points, identified sampling points and where applicable significant ecological vegetation communities; and
- (e) Key stakeholder contact list, comprising a detailed list of who will be contacted in the event of a failure, including but not limited to specific

contacts within: EPA, Local Government, Melbourne Water, and community stakeholders such as local Friends Groups that may be impacted on through a sewer spill.

- (f) A communication strategy to engage parties specified in the 'key stakeholder list' in (e) above.

This undertaking will be completed within 12 months of the date that this Undertaking comes into effect.

**Intended outcome:** The Company adequately plans for future leaks from sewer rising mains so as to minimise the environmental impacts from such events.

- 4.4 The Company undertakes to install and trial a minimum of three early warning leak detection systems on a rising main. The Company will then identify a preferred early warning leak detection system(s) and will install and trial this system(s) on a minimum of four additional sewer rising mains that are classified under the framework as medium risk, high risk or extreme risk that test the system under different conditions. The results of this trial will be collated by the Company in a format suitable for dissemination to the Water Industry.

This undertaking will be completed within 18 months of the date that this Undertaking comes into effect.

**Intended outcome:** The Company trials a minimum of three early warning leak detection systems with the objective of identifying a preferred system for further testing. The objective is to establish whether the early warning system is an effective means of mitigating potential environmental impacts from rising sewer main leaks.

- 4.5 The Company undertakes to:

- (a) disseminate to the Water industry and interested community members through the Balcombe Estuary Rehabilitation Group the findings of undertakings 4.1-4.4 listed in Section 4 of this Undertaking; and
- (b) host a workshop with senior Managers and Executives within the Water Industry to communicate all aspects of the Company's sewer rising main management program related to this Undertaking.

- 4.5.1 To effectively disseminate information to the water industry the Company will:

- (i) Produce a documented report detailing the findings of undertakings 4.1-4.4 listed in Section 4 of this Undertaking and disseminate this report through the Water Services Association of Australia network.
- (ii) Provide EPA with case studies of the early warning detection system trials to promote throughout the industry; and
- (iii) Present the findings of the early warning leak detection system trials at a national Water Industry conference, such as the annual Oz Water conference.

4.5.2 To disseminate information to interested community members, the Company will:

- (i) Present this Undertaking to the SE Water Customer Advisory Committee;
- (ii) Present this Undertaking to Balcombe Estuary Rehabilitation Group;
- (iii) Collaborate with the Balcombe Estuary Rehabilitation Group in the development of the contingency plan for the Craigie Road rising main;
- (iv) Present the findings of undertakings 4.1-4.4 listed in Section 4 of this Undertaking to the Balcombe Estuary Rehabilitation Group

This undertaking will be completed within 24 months of the date that this Undertaking comes into effect.

**Intended outcome:** The Company shares the learning's from completing this Undertaking with the Water Industry and interested community members as a means of encouraging better practice throughout the industry in the management of rising sewer mains and ensuring appropriate community engagement with those potentially affected by the alleged breach.

4.6 The Company undertakes to ensure that the persons engaged or employed by the Company to carry out the commitments within this Undertaking (whether internal employees or external consultants) have the necessary expertise and skills to ensure the intended outcomes for each undertaking are delivered. The Company has identified that the relevant expertise and skills required to successfully deliver this Undertaking are:

- (a) Expertise in the design, operation and maintenance of rising main systems;
- (b) An ability to openly accept and evaluate the merit of novel processes;
- (c) Knowledge of the water industry and an ability to communicate with it to obtain and disseminate information.

To deliver this commitment, the Company will:

- (i) identify specific skills required to successfully deliver each undertaking contained within;
- (ii) record how the skills and expertise of those engaged to deliver each commitment meet the skills identified in (a) above.

4.7 The Company undertakes that it will pay the costs of its compliance with this Undertaking.

- 4.8 The Company undertakes to provide written progress reports at six monthly intervals on the implementation of undertakings 4.1-4.5 of Section 4 of this Undertaking to the EPA from the date this Undertaking comes into effect and until this Undertaking is terminated. In addition, the Company will supply all documents and information requested by EPA from time to time for the purpose of assessing the Company's compliance with the terms of this Undertaking.
- 4.9 The Company undertakes to engage, at its own cost, an independent EPA auditor. The auditor will examine the content of this Undertaking and will provide written assurance to the Authority that the implementation of undertakings 4.1-4.6 of Section 4 of this Undertaking have been satisfactorily completed so as to deliver the intended outcomes of each undertaking.
- 4.10 The Company undertakes that any public reference to the actions contained within this Undertaking shall also make reference to this Undertaking.
- 4.11 The Company has estimated the cost of compliance with this Undertaking to be up to approximately \$330,000. The Company undertakes to provide to the Authority a detailed costing of compliance expenditure at the completion of this Undertaking.

## 5. ACKNOWLEDGMENTS

- 5.1 The Company acknowledges that EPA has alleged the Company has contravened provisions of the Act. These allegations are considered very serious and the Company has conducted its own investigations into both the incident itself and the necessary remedial measures required to minimise the likelihood of repetition of the incident.
- 5.2 The Company acknowledges that EPA:
- (a) may issue a media release on execution of this undertaking referring to its terms and to the concerns of EPA which led to its execution;
  - (b) may from time to time publicly refer to this Undertaking; and
  - (c) will make this Undertaking available for public inspection on a register of undertakings, in accordance with section 67G of the Act.
- 5.3 Further, the Company acknowledges that:
- (a) as provided in section 67D(4) of the Act, EPA's acceptance of this Undertaking means that proceedings may not be brought by EPA against the Company for the offences constituted by the contraventions alleged in clause 2.4 of this Undertaking while this Undertaking is in force;
  - (b) EPA's acceptance of this Undertaking does not affect EPA's power to bring proceedings against the Company, to issue penalty infringement notices or instigate any other enforcement action against the Company in relation to any subsequent contravention or alleged contravention of the

Act that is not the subject of this Undertaking, whether or not the subsequent contravention or alleged contravention involves a provision of the Act that is referred to in clause 2.4;

(c) this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this Undertaking or arising from subsequent conduct.

5.4 The Company acknowledges that EPA had reason to be concerned as to the alleged facts and has offered this Undertaking in the terms of Section 4.

5.5 The Company acknowledges that this Undertaking has no operative force until accepted by EPA, and the Company and EPA acknowledge that the date of this Undertaking is the date on which it is accepted by EPA.

## **6. STATEMENT OF REGRET**

6.1 The Company regrets the sewage spill and discharge of effluent to Balcombe Creek.

The Company recognises that the wellbeing of our community is largely dependent upon the health of the environment. As such, the Company and its staff will strive for improved environmental performance and embrace a culture of continual improvement and environmental leadership.

## **7. ASSURANCE ABOUT FUTURE BEHAVIOUR**

7.1 The Company acknowledges that through the implementation of the actions outlined within this Undertaking, it will reduce the risk and lower the consequence of future incidents. The Company has undertaken an extensive review of our internal processes with a view to improving the timeliness of our response to such incidents.

## **8. EFFECT OF NON-COMPLIANCE**

8.1 The Company acknowledges that failure to comply with this Undertaking may result in the Authority seeking to enforce this Undertaking in the Magistrates' Court.

## **9. TERMINATION OF ENFORCEABLE UNDERTAKING**

9.1 This Undertaking will terminate thirty months from the date that this Undertaking comes into effect. All undertakings contained within section 4 of this Undertaking must be completed by this time. Failure to do so may result in the Authority taking action to enforce this Undertaking.





THE COMMON SEAL of THE )  
COMPANY was affixed in accordance with )  
the Corporations Act 2001 in the presence of:  
Shaun Cox  
Managing Director  
South East Water Limited

*[Signature]*  
..... Director

*[Signature]*  
..... Director/Company Secretary  
*Christopher M. F. [Signature]*

Accepted by the Environment Protection Authority under section 67D  
of the Environment Protection Act 1970 by its CEO and Deputy  
Chairman:

*[Signature]*  
.....

JOHN MERRITT

CEO and Deputy Chairman of the Environment Protection Authority:

[date] 11.6.10

