The admission from Delta is important in this case. It is an acknowledgment that unless there is express authorisation under an environment protection licence to discharge pollutants, any such discharge is unlawful, *even where the company is required to monitor the discharge of those pollutants*. This has implications for many other licences in NSW that may have similar conditions.

Concluding comments

Among other things, this case highlights significant gaps and deficiencies in the administration of pollution laws in NSW.

The OEH is responsible for administering the POEO Act, and investigating, and prosecuting where appropriate, breaches of that Act. Yet no enforcement action was taken by OEH, even when Delta's own monitoring results submitted to the OEH demonstrated ongoing pollution. When it is left up to a volunteer community group like BMCS to take on a state-owned corporation for breaches of pollution laws, one has to ask, what is the role of the government regulator in this case?

To Delta's credit, it has now acknowledged the pollution, and agreed to apply to the OEH to have conditions imposed on its licence. But again, the question needs to be asked, is there something wrong with the NSW licensing system, when it is up to the *polluter* to ask the *regulator* to stop it from polluting?

SOUTH AUSTRALIA

***Davies v Minister for Urban Development and Planning and Anor* [2011] SASC 87** **by Nicole Harris**

The plaintiffs (the Davies) in these proceedings sought various declarations, including that an amendment of the Development Plan of the Rural City of Murray Bridge made on 20 July 2000 was invalid. The amendment had extended the boundaries of the 'flood zone' over the Davies' land (and over land leased by thousands of other people).

The amendment had been made in accordance with s 29(2) of the *Development Act 1993* (SA), which provides that the Minister may amend a Development Plan in order to make a change of form (not of substance) in the plan. The Davies argued that the amendment was substantive and should have been made in accordance with 'usual process' including the preparation of a Plan Amendment Report (now known as Development Plan Amendments) and public consultation.

The court examined the history and nature of declaratory relief and matters relevant to the exercise of its discretion, including the passage of time since the amendment (almost 11 years), the prejudice to the Davies resulting from the amendment and the prejudice to the thousands of lessees that would be affected if the amendment was declared to be invalid.

The court concluded that the effect of the amendment was limited to substituting a number of maps in the Development Plan and to adjust the mapping references accordingly. On that basis, the court found that the amendment had been validly made pursuant to s 29(2). The court granted summary judgment in favour of the Minister and the Development Assessment Commission (DAC) on the basis that it was satisfied that there was no reasonable basis for the Davies' claim.

VICTORIA

***Reachy Pty Ltd v Greater Geelong* CC [2011] VCAT 1202 (27 June 2011)** **by Barnaby McIlrath**

The Victorian Civil and Administrative Tribunal (VCAT) set aside a refusal by the Greater Geelong City Council of a proposed 82 lot subdivision on the grounds of odour concerns from a nearby abattoir.

The decision is worth noting because of its technical analysis of where the relevant buffer distance should be measured