
**Regulatory reform within the
South Australian
Environment Protection Authority:
progress and future**

November 2006

Regulatory reform within the South Australian Environment Protection Authority: progress and future, November 2006

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EXECUTIVE SUMMARY

Effective environmental regulation is integral to successful markets, an essential ingredient of a vibrant, modern economy. Unregulated markets would be chaotic, unfair and unlikely to deliver what people want—safe, reliable products and a clean environment in which to live and work

NHEEPA 2005

The South Australian Environment Protection Authority (EPA) is the state's primary environmental regulator, with a vision of achieving a clean, healthy and valued environment that supports social and economic prosperity for all South Australians. In an ever-changing environment, the EPA recognises that to deliver this role effectively it must be a risk-based, outcome-focused and cost-effective environmental regulator.

In the context of this recognition, this report describes the structured regulatory reform approach that has been adopted by the EPA to improve the effectiveness and efficiency of environmental regulatory tools. It also describes what the EPA means by 'regulatory reform' and provides a discussion of the guiding principles for directing ongoing reform.

Regulatory reform is not the removal of regulatory controls (deregulation) to the detriment of the environment, the community or business. Instead, its approach is to ensure that any regulatory controls that are applied are commensurate with the environmental risks.

What is regulatory reform in the EPA?

Regulatory reform is an ongoing systematic process to minimise the overall costs of regulation to the government, business and the community, without compromising progress towards a clean, healthy and valued environment that supports social and economic prosperity for all South Australians.

The following principles of regulatory reform are adopted by the EPA for guiding its policy, operational and compliance roles (adapted from the Environment Agency (UK) 2005):

- transparency—having clear rules and processes
- accountability—clearly demonstrating EPA performance
- predictability—the same approach will be applied within and between sectors
- proportionate—response will be commensurate with environmental risk
- targeted—the desired environmental outcome will be central to planning and decision-making.

Recently, the EPA strengthened its capacity to pursue regulatory reform initiatives within the agency, and this report concludes by highlighting those key reform areas that present a challenge and opportunity for the future.

INTRODUCTION

As South Australia's primary environmental regulator of significant environmental risks (EPA SA 2005b) the EPA has had a strong focus on the use of regulatory tools to reduce overall environmental impacts for the benefit of all South Australians. Effective environmental regulation is an important tool for preventing, mitigating and remediating environmental degradation, and can assist a growing economy by creating pressure that drives innovation and alerts business about resource inefficiencies and new opportunities (NHEEPA 2005).

The main pieces of environmental legislation administered by the EPA are the *Environment Protection Act 1993* and the *Radiation Protection and Control Act 1982*.

The EPA manages nearly 2000 licences, and each year undertakes more than 1000 compliance inspections at industry sites that are categorised as undertaking activities of environmental significance (EPA SA 2005a). Annually, the EPA also provides environmental advice and direction to planning authorities on almost 500 developments of environmental significance, and responds to around 18,000 calls from the public seeking information, assistance or advice (Management Consulting Alliance 2006). Although these are the main recognisable roles of the EPA, the agency also uses a range of other behavioural change tools, for example education, policy development and economic instruments.

The EPA has now been established for more than 10 years, and during that time it has evolved to respond to the changing physical, economic and social environment of South Australia. There is an increasing expectation for regulators to effectively respond to the complex challenges and competing demands of business and society. While a process of continuous improvement is expected of all public authorities to meet these tensions, the EPA has adopted a regulatory reform approach to focus continuous improvement on the strategic priorities of the EPA and the state.

Regulatory reform and related approaches tend to share the same intent, which may be why terms such as 'smart regulation' or 'reducing administrative burden' appear at times to be used interchangeably. This has brought about some confusion, and leads to the question 'So what is regulatory reform?'

This report addresses that important question by providing a definition of regulatory reform and discussion of the aspects of regulatory reform as they apply to the EPA. To further improve the understanding of the EPA's approach in this area, this report also describes a number of examples where the EPA has demonstrated the delivery of regulatory reform initiatives in the state.

For the benefit of all South Australians, the EPA intends to become a national leader in cost-effective environmental regulation, and the EPA has already demonstrated a capacity to progress towards this goal using the regulatory reform approach.

THE NEED FOR REGULATORY REFORM

In a recent review of Australian government regulations, the Regulation Taskforce considered that regulatory reform was needed to respond to there being too much regulation and, in many cases, there being regulations that impose excessive and unnecessary costs on business (Regulation Taskforce 2006).

The EPA believes that environmental regulations that are poorly targeted, complex or unnecessary not only result in excessive costs to business (and in turn the community) but are also unlikely to be effective in delivering a clean, healthy and valued environment that supports social and economic prosperity for all South Australians.

The primary intention of reform should, therefore, be to reduce the unnecessary costs to business while providing adequate protection of the environment and health of the community.

It is unclear how much regulatory reform is needed, as the degree of unnecessary costs (administrative or compliance) to business resulting from EPA regulation in South Australia is difficult to calculate. However, a comparative assessment of various countries (based on criteria that mainly focused upon business establishment, taxation and employment, but also covered environmental regulation) reported that Australia was ranked sixth out of the 155 countries in terms of being the quickest and cheapest country in which to establish and operate a business (World Bank and International Finance Corporation 2006). A separate study has recently reported that Adelaide has the lowest business costs in its population bracket within Australia and the third lowest costs in the world (MMK Consulting 2006).

Regardless of uncertainty surrounding the extent to which regulatory reform is required, the EPA believes that there are opportunities to improve the cost-effectiveness of environmental regulation in South Australia.

These opportunities for improvement have been reinforced by the South Australian Government establishing the target of reducing government red tape by 25% by 2008, and establishing a Competitiveness Council and Government Reform Commission to oversee these and other reform initiatives.

Regulatory reform provides the principles and focus that will allow the EPA to continue to improve its regulatory practices in those areas that provide the maximum benefit to South Australians, and will allow the EPA to progress towards best practice regulation.

REGULATORY REFORM IN THE EPA

The term regulatory reform has been used over many years and used to describe different change programs in governments and, consequently, the meaning has changed over time and is not always clear (Sparrow 2000). Confusing the matter further, there are many terms that are used interchangeably when discussing regulatory reform. Terms such as '*reducing regulatory burden*', '*reducing administrative burden*', '*deregulation*', '*smart regulation*', '*modern regulation*' and '*red tape reduction*' are all commonly used in Australia and other countries.

The definitions for these terms are sometimes varied, and some agencies have chosen to use other terms for a variety of reasons. The EPA has adopted the term 'regulatory reform' to describe the broad approach to improving the cost-efficiency and effectiveness of regulatory services within South Australia.

What is regulatory reform in the EPA?

Regulatory reform is an ongoing systematic process to minimise the overall costs of regulation to the government, business and the community, without compromising progress towards a clean, healthy and valued environment that supports social and economic prosperity for all South Australians.

The main reason for adoption of the descriptor 'regulatory reform' is that this term describes a process rather than an outcome (ie it is clear that improving regulatory efficiency will be a continual process of improvement). Also, this term does not necessarily focus attention on one area of reform (eg reducing administrative burden, deregulation).

Regulatory reform for the EPA does not mean the removal of regulatory controls to the detriment of the environment, the community or business, and regulatory reform should not result in an overall increase in environmental impacts. Instead, the regulatory reform approach allows an appropriate regulatory response, and allows innovative and complementary tools to be used to achieve the desired outcome.

Although deregulation is not an objective of regulatory reform, regulations may be removed if they are redundant, duplicate other regulatory controls, do not deliver the intended policy objective, or the policy outcome can be achieved in a more cost-effective manner.

The regulatory reform approach adopted by the EPA means that there is an initial preference for least-cost regulatory intervention (EPA SA 2005b), and a desire to minimise the overall costs of compliance. While the EPA remains keen to pursue opportunities for using economic instruments to manage environmental risks, the approach by the EPA is that unless an economic incentive (or disincentive) is specifically intended by the policy, then the least overall cost (to government, business and the community) should be pursued.

PRINCIPLES OF REGULATORY REFORM FOR THE EPA

To guide regulatory reform initiatives, the EPA has adopted five key principles that it considers are critical to achieving the aim of effective and cost-efficient environmental regulation, as follows (adapted from the Environment Agency (UK) 2005):

- transparency—having clear rules and processes
- accountability—clearly demonstrating performance
- predictability—the same approach will be applied within and between sectors
- proportionate—response will be commensurate with environmental risk
- targeted—the desired environmental outcome will be central to planning and decision-making.

These principles will guide future reform initiatives in all areas of EPA service delivery (eg policy development, operational delivery and compliance activities).

THE STRUCTURE OF REGULATORY REFORM IN THE EPA

The regulatory reform model in the EPA has three specific themes that are considered necessary for the delivery of effective environmental regulation. These themes provide a context and structure to the variety of reform initiatives and projects.

The three regulatory reform themes are:

1. matching regulatory response to the environmental risks
2. best practice regulations
3. best practice application.

1. Matching regulatory response to the environmental risks

Effective regulatory reform in the EPA should not result in an overall increase in adverse environmental impacts, but rather should ensure that the resources available (to government, business and the community) are directed towards those areas that represent the highest environmental risk. A risk-based approach is a key principle of regulatory reform in the EPA, and needs to be applied to all areas of response.

Through incorporation of this risk-based approach the EPA recognises that not all risks will, or indeed can, be eliminated. The Regulation Taskforce believed that the proliferation of regulations in general is in part the result of this unrealistic expectation (Regulation Taskforce 2006). A risk-based approach will, however, provide the foundation for an appropriate and proportional regulatory response to an identified environmental risk.

A risk-based approach means that the type and application of regulations will be best suited to the issue, with an initial preference for the least-cost regulatory intervention, and the ability to escalate or modify the regulatory response if necessary, based upon better knowledge of the risk and its consequences.

2. Best practice regulations

The development of better regulations (ie legislative instruments) and the improvement of existing regulations requires the application of the key principles to ensure that the final regulatory system (eg legislation, codes of practice, educational campaigns) achieves the policy objectives in the most cost-effective manner. The following features adopted from the Council of Australian Governments (Council of Australian Governments 2004) will guide the development of improved regulations within the EPA:

- **minimising regulatory burden;** ensuring that the minimal regulation is adopted to achieve the policy outcome, and that the regulations actively minimise the administrative requirements of government and the regulated sector
- **assessment of the impact of proposed regulation;** use of a regulatory impact assessment process to determine costs and benefits of regulations and assist determination of whether the regulatory response is a proportional response to the identified environmental issue
- **performance-based;** regulations should focus on outcomes rather than inputs, and allow clarity in the determination of compliance
- **plain language drafting;** regulatory instruments should be drafted in 'plain language' to improve clarity and simplicity

- **engaged**; genuine consultation should be undertaken, and a broad communication of the finalised regulation should occur.

3. Best practice application

While the development of best practice regulation is pivotal to regulatory reform, it is equally important that regulatory agencies ensure their internal administration, compliance and enforcement processes move towards best practice. Although improved regulatory tools and improved delivery cannot be completely separated (and will actually need to be coordinated) there are opportunities for specific reform of compliance and enforcement activities. These include:

- **applying complementary instruments**; wisely applying a mix of complementary regulatory instruments to respond to an environmental issue (this does not mean using all available tools) in an appropriate sequence
- **preference for least interventionist measures**; the degree of regulatory coercion should be balanced and proportional to the environmental issue or risk
- **escalating responses**; a structure and process that begins with the least interventionist method, and allows the severity of the regulatory response to be escalated in response to non-compliance
- **empowering third parties**; cooperation and empowerment of third parties who may be more effective in regulating (or delivering) improved environmental performance—this could include industry organisations, financial or insurance institutions or other government entities
- **maximising opportunities to go beyond compliance**; incorporating processes that allow and encourage businesses to achieve beyond compliance (Gunningham & Grabosky 1998).

INITIATIVES ALREADY DELIVERED OR WELL ADVANCED

Previous sections of this report have described the background and aspects of regulatory reform as it relates to the EPA. This section presents a variety of regulatory reform initiatives that have already been delivered by the EPA. The list is not intended to be exhaustive, but provides examples of where the EPA has reduced the costs of regulatory compliance while providing the necessary level of protection for the South Australian environment.

These initiatives are described under the three key themes of regulatory reform.

1. Matching regulatory response to the environmental risks

Risk framework for environmental authorisations (licences)

A framework has been developed and implemented for all licensed sites within the state that documents a risk-based approach to the identification of hazards and assessment of impacts. This risk-based approach has resulted in a 3-tiered framework whereby regulatory controls (that may be a mix of performance, prescriptive or process conditions) are appropriate and proportional to the risk.

Key outcomes:

- *risk-based approach to regulating licensed activities*
- *compliance burden for licensees proportional to environmental risk.*

Risk framework for regulatory monitoring

A review has been completed to redevelop a risk framework for requiring licensed sites to undertake monitoring as part of an environmental authorisation. Regular monitoring is required at more than 400 industry sites around the state, and the implementation of this framework will ensure that any regulatory monitoring is necessary and is appropriately focused.

Key outcomes:

- *risk-based application of monitoring*
- *reduces costs to businesses by removing redundant monitoring requirements*
- *reduces time spent by the EPA on reviewing redundant or poorly targeted monitoring.*

A framework for applying the precautionary approach

An interim position statement has been produced that provides a framework for the EPA to apply a precautionary approach in a systematic and defensible manner. The position statement recognises that there must be scientific uncertainty and the risk of environmental harm must have substance (ie there must be rational defensible reasons for applying it). However, when the application of the precautionary approach is appropriate, the framework ensures that decisions are transparent and consistent within the agency.

Key outcomes:

- *incorporates the precautionary approach into a risk-based assessment*
- *improves transparency and predictability of decision making.*

2. Best practice regulations

Restructuring of licence fees

Reforms to the way licence fees are determined are well advanced. Rather than fees being determined on the level of production, fees are proposed to be charged based on the 'user' and 'polluter pays' principles and will comprise three components: a (low) administrative fee, an environmental management fee (commensurate with the level of regulatory effort) and a load-based component.

Key outcomes:

- *a principle and equity-based redistribution and recovery of costs associated with regulating licensed activities*
- *some economic incentive for licensed activities to improve their environmental performance*

Provision of civil penalties

A new system has been incorporated into the *Environment Protection Act 1993* to allow the EPA to determine civil penalties for certain offences. This process provides an option for applying monetary penalties for non-compliance in circumstances such as offences that were unintentional and where the environmental consequences are not great. In these instances, this option may be more appropriate than pursuing criminal prosecution and conviction through the judicial system.

Key outcomes:

- *provides for penalties that are proportional to offences*
- *can reduce time delay for resolving penalties for non-compliance.*

Reduced timeframe for creating environment protection policies (EPPs)

The *Environment Protection Act 1993* has been amended to reduce the time taken to develop and implement environment protection policies. The amendments include clarification and removal of some prescriptive consultation phases.

Key outcomes:

- *reduces the resources and time taken to develop EPPs*
- *provides flexibility to match consultation approaches to the nature of the EPP.*

Expanded opportunities for third party regulators

An expansion of the scope for other authorities to participate in the administration of the *Environment Protection Act 1993* has occurred. These changes enable councils and other public authorities to have increased powers and capacity to administer and enforce the *Environment Protection Act 1993* as well as simplifying appointment procedures for council-authorized officers.

Key outcomes:

- *empowers local government and other third party regulators to effectively respond to local environmental issues*
- *simplifies the administrative appointment process.*

Reducing redundant development referrals

The EPA has requested the removal of a number of activities from the schedule of developments that need to be referred to the EPA for advice. This removal is in response to applying a risk-based approach that has identified that the local planning authority can sufficiently decide upon these developments through consideration of guidance publications developed by the EPA.

Key outcomes:

- *shorter response times for the assessment of development approvals*
- *reduces resource allocation by the EPA to providing specific responses where generic responses provide the equivalent degree of information*
- *reduces the cost to the developer by not paying referral costs.*

Clarifying definitions

Refinement of definitions within the *Environment Protection Act 1993* has been completed to clarify the scope of terms, and also to reduce instances where provisions of the *Environment Protection Act 1993* 'capture' unintended activities or have other perverse outcomes.

Key outcomes:

- *reduces the occurrence of regulation of unintentional activities*
- *improves clarity of application and requirements of regulatory provisions.*

Improved process for implementing national standards

The Environment Protection and Heritage Ministerial Council develops National Environment Protection Measures (NEPMs) that apply throughout Australia as a valid law in each jurisdiction. The *Environment Protection Act 1993* has recently been amended to allow speedy adoption of these NEPMs as Environment Protection Policies, while also allowing the capacity to make any changes necessary to properly tailor them to fit into South Australia's legislative requirements.

Key outcomes:

- *reduced time for adoption of these national standards*
- *reduced inconsistencies between NEPM EPP and other state legislation.*

Reducing redundant aquaculture regulations

The EPA in cooperation with Primary Industries and Resources SA have redesigned the environmental regulations required for the aquaculture industry and reduced the number of authorisations required for aquaculture enterprises.

Key outcomes:

- *reduces the administrative burden on the aquaculture industry and the government*
- *provides greater consistency in regulatory requirements for industry operators.*

3. Best practice application

Coordination ('one-stop-shop') for assessment of significant developments

The EPA coordinates through the chief executives' Planning and Development Forum, and through the chief executives of the Environment and Conservation and River Murray portfolios, to provide a 'one-stop-shop' for early involvement in developments that require input and advice across the different agencies.

Key outcomes:

- *reduces delays and requirement for developers to individually seek out each relevant department*
- *reduces duplication of effort between agencies*
- *provides clarity and transparency of environmental requirements.*

'Plain language' licences

The EPA has implemented a process, including a Licence Condition Style Manual and managerial quality control, to ensure that licence conditions achieve a high standard with regard to interpretability and clarity.

Key outcomes:

- *licensees are able to clearly understand the requirements of environmental authorisations*
- *increased efficiency within the EPA by reducing time taken to develop and endorse licence conditions.*

Cross-agency cooperation for mining

The EPA and Primary Industries and Resources SA have adopted a Memorandum of Understanding that provides administrative arrangements to reduce duplicated regulation arising from the relationship between the *Mining Act 1971*, the *Roxby Downs (Indenture Ratification) Act 1982* and the *Radiation Protection and Control Act 1982*.

Key outcomes:

- *less duplication for mining operators in compliance reporting to government*
- *makes cost-effective use of skills and resources within the two agencies.*

Coordinated response to aquifer storage and recovery

Aquifer storage and recovery (ASR) provides an option for reducing demands on traditional water supplies through storing water (during winter) in underground aquifers for later extraction (during summer) and use. The EPA is cooperating with the Department of Water, Land and Biodiversity Conservation to reduce the duplication of regulation required for ASR and cooperatively identify one government agency to monitor and regulate environmental risks.

Key outcomes:

- *reduces regulatory duplication through a one-stop-shop*
- *incorporates a risk-based approach to regulating ASR.*

Improved processing of development referrals

The EPA has undertaken a major review into the processing of referrals for development assessment. This has included a review of internal systems (staff and IT) and has resulted in reduced time taken to provide responses to planning authorities. The EPA is now one of the leading agencies in the state in complying with statutory timeframes for assessing development applications.

Key outcomes:

- *reduced time taken to provide environmental assessments of development applications referred to the EPA*
- *cost-effective use of skills and resources.*

Default long-term licences

Licences issued by the EPA have had a defined term, which was generally for a 12 month period. As a default, all licences are now issued with a minimum term of five years, and possible term of ten years on application to the EPA.

Key outcomes:

- *reduces the administrative workload for licensees of reapplying for licences every year*
- *reduces the perceived uncertainty for business of only having authorisation to operate for one year at a time.*

Use of technology solutions in administering licences

Functionality has been incorporated into the EPA website to allow licensees to renew their licences and pay licence fees online.

Key outcomes:

- *reduces transaction costs*
- *reduces delays in licence renewal transactions.*

Pursuing interstate consistency

The EPA has a significant role in the Australian Environmental Law Enforcement and Regulators Network (AELERT) that assists in providing consistency in administrative methods and shares resources to provide assistance to all Australian jurisdictions.

Key outcomes:

- *promotes consistency across jurisdictions*
- *allows improved processes and approaches to be developed and available to the EPA at reduced cost.*

Consistent and predictable compliance and enforcement

The EPA has developed and promoted its guideline that clearly defines the process that is followed in response to identified non-compliance. This *Compliance and Enforcement Guideline* is available on the EPA website.

Key outcomes:

- *provides a framework for applying least interventionist measures and escalation in response to non-compliance*
- *incorporates a risk-based approach into determination of regulation responses*
- *provides increased certainty and predictability for business.*

Coordinated response to local environmental issues

The EPA delivers a cooperative program to provide equipment, advice and support to local government authorities to respond to environmental nuisance issues of a local nature. This approach recognises that local government officers operate in the local area, and often understand the issues and background more comprehensively than the EPA.

Key outcomes:

- *empowers local government to respond effectively to local environmental issues*
- *can provide a faster response for the community*
- *coordinates responses to issues (reduces duplication of role).*

Model licences

The EPA has developed and is implementing a system where those licences and sectors that present a lower environmental risk have model licences and conditions that are clear, concise, appropriate and consistent. The process for reviewing and implementing these 'model licences' will continue as an ongoing project.

Key outcomes:

- *reduces unnecessary inconsistencies in regulatory requirements between similar activities*
- *reduces administrative effort within the EPA for maintaining inconsistent requirements*
- *ensures improved quality assurance of licensing requirements*
- *promotes overall compliance costs to be commensurate with environmental risks.*

Cross-agency support for marine pollution

The EPA and Transport SA have jointly adopted a Memorandum of Understanding that defines a protocol for the collaborative and cooperative investigation by the EPA on behalf of Transport SA of marine spill incidents which come under the auspice of the *Protection of Marine Waters (Prevention of Pollution from Ships) Act 1987*.

Key outcomes:

- *reduces requirement for Transport SA to maintain marine investigations unit*
- *cost-effective use of skills and resources.*

FUTURE REGULATORY REFORM OPPORTUNITIES

The EPA has established a dedicated functional area to coordinate regulatory reform programs within the agency. The priority for regulatory reform is highlighted in the *EPA Strategic Plan 2005-2008*, and the previous sections of this report have demonstrated the EPA's capacity to deliver these types of reforms.

This document has described in general the principles that will guide the EPA in pursuing regulatory reform, and the list below highlights some of those initiatives that will be the focus for the EPA over the next five years.

1. **Removal of revenue reliance** Presently the operating budget for the EPA is strongly coupled to the revenue it receives from licensing fees. This will limit significantly the opportunities for pursuing licence reform where such reform may result in a cost saving to business (through reduced compliance costs) but a commensurate reduction in EPA's budget.
2. **Licensing and regulatory administrative processes review** A review will be undertaken to improve the internal administrative processes associated with licences issued by the EPA. This review program will run over a number of years and will drive improved efficiencies, quality and timeliness in licensing transactions.
3. **Industry Compliance Auditing System** A structured auditing system will be implemented to provide a streamlined process for assessing compliance at licensed sites.
4. **Empowering councils** A resolution of the appropriate allocation of roles and responsibilities will be pursued between the EPA and councils to respond to local environmental nuisance issues.
5. **Legislative reviews** A series of specific reforms of legislation, such as the development of specific site contamination legislation, review of the Noise EPP, finalisation of the Waste to Resources EPP, and review of Schedule 1 of the *Environment Protection Act 1993* are priorities for the EPA.
6. **Delegated decision making framework** Developing a structured process that ensures the appropriate thresholds are established and consistently applied when EPA staff are exercising delegated powers.
7. **Performance reporting** The EPA has adopted a structured and systematic process for defining key performance indicators to assess and report on the performance of the agency in line with its strategic plan.
8. **Innovative regulatory tools** The EPA will undertake a comprehensive assessment of the opportunities to implement innovative environmental regulations in South Australia.

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