

Walking the Talk?

Implementation and enforcement of
the Environment Protection Act 1970

ABOUT THE ENVIRONMENT DEFENDERS OFFICE (VICTORIA) LTD

The Environment Defenders Office (Victoria) Ltd ('EDO') is a community legal centre specialising in public interest environment law. We support, empower and advocate for individuals and groups in Victoria who want to use the law and legal system to protect the environment. We are dedicated to a community that values and protects a healthy environment, and support this vision through the provision of information, advocacy and advice.

In addition to Victorian-based activities, the EDO is a member of a national network of EDOs working collectively to protect Australia's environment through public interest planning and environmental law.

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1. ABOUT THIS REPORT SERIES

This is the first report in a series, *Monitoring Victoria's Environmental Laws*, to be published by the EDO. The reports examine the extent and effectiveness of government's implementation and enforcement of key environmental laws in Victoria.

The EDO has witnessed how Victoria's environmental laws are implemented and enforced for over 20 years through our advice to and representation of the community on environmental law issues. Over that time we have become aware of countless environmental laws that are in force but are not effectively used by government to protect or improve the environment. Of further concern is the lack of publicly available information indicating how government regulators implement and enforce their laws. Public release of this information is vital to ensure government is accountable for the way in which it operates.

The *Monitoring Victoria's Environmental Laws* series has three main aims:

1. To empower the public by providing a consolidated source of information on whether regulatory agencies are implementing and enforcing their regulatory responsibilities under key environmental laws. The information will be a resource for the community for submissions or discussions with government, to encourage greater action and compliance by government.
2. To promote transparency and accountability by identifying what implementation and enforcement information is publicly available and, if that information is lacking, to inform government agencies of the type of information that should be publicly available.
3. To improve the implementation and enforcement of environmental laws by encouraging greater action and compliance by government agencies.

Ultimately we aim to ensure that Victoria's environmental laws are used to their greatest extent to protect and improve the environment.

Each report focuses on one area of environmental regulation. Each report will be updated and released every two years to provide an ongoing 'report card' of how environmental laws are being used. While we hope the 2011 reports will provide useful baseline data and recommendations for improvement, the full value of the reports will be seen over time through their ability to compare changes (and hopefully improvements) in the implementation of environmental laws over the next decade.

The reports are compiled using publicly available information, including information sourced from government agency websites, annual reports, and reports from review bodies such as the Auditor-General's and Ombudsman's offices. The EDO also requests information directly from the relevant regulating agency. Information is not always forthcoming and instances where information could not be found are highlighted in the report.

2. REPORT HIGHLIGHTS

This report investigates how effectively the Environment Protection Authority (EPA) is implementing and enforcing the *Environment Protection Act 1970* (EP Act).

The mandate of the EPA is to protect, care for and improve the environment on behalf of the Victorian community. Following some high-profile environmental pollution incidents, widespread public criticism of the EPA's operations, and the release of two highly critical reports on the EPA by the Victorian Auditor-General¹ and the Victorian Ombudsman², the EPA acknowledged that it was not fulfilling its role as Victoria's key environment protection agency and not meeting the expectations of the community in this regard. Over the past 18 months the EPA has taken significant steps to improve its operations and now has a goal of becoming a 'world leading, modern environmental regulator'.³ The EPA is to be commended for its focus on improving operations to be a better regulator and to better protect the environment.

An important step that the EPA took to understand the improvements needed was the commissioning of an independent review of its compliance and enforcement activity. The report *Compliance and Enforcement Review: A Review of EPA's Approach (the Krpan report)*⁴ was delivered in February 2011 and is an excellent review of the EPA's limitations in conducting compliance monitoring and enforcement. It also contains a valuable set of recommendations for reform.

The EPA's regulatory responsibilities fall primarily under the EP Act, particularly the control and abatement of pollution and industrial waste. The EP Act provides the EPA with a range of statutory tools such as State Environment Protection Policies (SEPPs), Waste Management Policies (WMPs), works approvals and licences, and Neighbourhood Environment Improvement Plans (NEIPs).

KEY RECOMMENDATIONS

The EDO recommends that the EPA:

- produce easy-to-read consolidated versions of all SEPPs on their website;
- review and update all SEPPs and WMPs as part of the upcoming policy, prioritising those that are due for review;
- ensure all licences and works approvals are available to the public free of charge;
- continue to implement the recommendations of the Krpan report as a priority, in particular the increased focus on enforcement of environmental offences in the interest of the whole community;
- use its power wherever possible to prosecute directors and managers of companies who have committed serious offences;
- establish a comprehensive, searchable, online public register containing information about the EPA's monitoring activities, including the information contained in Appendix C of this report;
- report on compliance and enforcement activity annually, including reporting on the information contained in Appendix C of this report;
- give greater consideration to the use of court penalties to support public environmental protection activities under s67AC of the EP Act;
- establish a review of the EP Act with a view to implementing best practice environment protection legislation for Victoria; and
- continue to prioritise the transition to becoming a modern environmental regulator.

The Victorian Government must continue to support the EPA in these efforts.

1. Victorian Auditor General's Office, Hazardous Waste Management; Victorian Auditor-General's Report, June 2010 http://www.audit.vic.gov.au/reports_publications/reports_by_year/2009-10/20100906_hazardous_waste.aspx at 7 October 2010.
2. Ombudsman Victoria, Brookland Greens Estate—Investigation into Methane Gas Leaks, October 2009 http://www.ombudsman.vic.gov.au/resources/documents/Brookland_Greens_Estate1.pdf at 7 October 2010.
3. Stan Krpan, Compliance and Enforcement Review: A Review of EPA's Approach, February 2011, (i).
4. Krpan, above n 3.

Our review shows that one SEPP and two WMPs are overdue for review and one statutory plan—the solid industrial waste management plan—has never been made, despite it being due in 2003.

Analysis of the EPA's monitoring and enforcement shows that compliance monitoring has been lacking over the last five years. Data from the EPA indicates that prosecutions are very low when compared with the number of major pollution incidents that occur. Both the Auditor-General and the Ombudsman were highly critical of the EPA's compliance and enforcement activity, and made a number of recommendations for improvement. The Krpan report set out detailed recommendations of how the EPA would need to improve to become a modern and effective regulator. The EPA has begun to implement some of those recommendations and intends to continue to do so over time.

In particular our review has revealed that publicly available information on the EPA's implementation and enforcement activity is lacking. Key information, such as how many licences are issued each year and how many complaints of a suspected breach of the EP Act are reported to the EPA each year, is not available without a Freedom of Information request. In addition, there is no consolidated report of the EPA's enforcement activity—information is found across three sources and is not necessarily complete. We make a number of recommendations regarding the type of compliance and enforcement data that we consider should be made publicly available by the EPA each year.

The Krpan report gives a detailed analysis of the EPA's compliance and enforcement activity. Our report does not go into the same level of detail, but draws on that data, as well as data from many other sources, to provide a broad snapshot of EPA's implementation and enforcement of the EP Act. As noted in part 1, the EDO will revisit this information every two years to track the EPA's ongoing improvements in the implementation and enforcement of its environmental regulation.

3. BACKGROUND

3.1 *The Environment Protection Act 1970 and the Environment Protection Authority*

The Victorian community's expectations about environment protection are high.

The mandate of the Environment Protection Authority (EPA) is to protect, care for and improve the environment on behalf of the Victorian community. As one of Victoria's environmental regulators, the EPA's core functions are to implement and monitor compliance with the *Environment Protection Act 1970 (EP Act)* and associated regulations and policies, and to take action against people who breach the EP Act through prosecutions, fines and other enforcement measures.

The purpose of this report is to examine the regulatory requirements under the EP Act and associated regulations and policies, together with the framework within which the EPA operates, in order to:

- assess, monitor and provide the public with information on whether the EPA is meeting community expectations when conducting its regulatory responsibilities under the Act;
- promote transparency and accountability by identifying key information regarding implementation and enforcement that should be publicly available; and
- encourage greater implementation and enforcement of the EP Act by the EPA.

Following some high-profile environmental pollution incidents, widespread public criticism of the EPA's operations, and the release of two highly critical reports on the EPA by the Victorian Auditor-General⁵ and the Victorian Ombudsman⁶, the EPA has taken steps to improve its operations over the last 18 months. It now has a goal of becoming a 'world leading, modern environmental regulator' and is taking various actions to achieve that goal.⁷ One of those actions was the commissioning of an independent review of its compliance and enforcement activity, which was delivered in February 2011 (**the Krpan report**).⁸

Whether the EPA's efforts to become a better environmental regulator will lead to improved environmental outcomes will be revealed over time. As the EPA's operational changes commenced reasonably recently, any improved outcomes may not yet be reflected in the data that is currently available and analysed for this report. The EDO welcomes the EPA's renewed focus on improving its operations and looks forward to reporting on this in the years to come.

Work on this report commenced before the Krpan report was released and at that time there was very little publicly available data on the EPA's monitoring and enforcement activity. The Krpan report provides an excellent analysis of the EPA's compliance and enforcement activity, and the data contained in that report has been extremely helpful in filling in a number of the gaps in publicly available data. The EPA has also been helpful in providing the EDO with comments and data. Gaps do remain however, as highlighted throughout this report.

It should be noted that this report does not go into the same level of detail as the Krpan report, but draws on that data, as well as data from many other sources, to provide a broader snapshot of EPA's implementation and enforcement of the EP Act. One of the features of the EDO report series that sets it apart from other reports on the EPA in recent years is our intention to revisit this data every two years to compare the EPA's implementation and enforcement of its legislation. We hope that the value of the EDO report will be particularly evident in future years as a source of ongoing review and analysis of the EPA's journey towards being a modern regulator.

⁵ Victorian Auditor-General's Office, above note 1.

⁶ Ombudsman Victoria, above note 2.

⁷ Krpan, above n 3, (i).

⁸ Krpan, above n 3.

3.2 The EPA's regulatory responsibilities

The EPA is responsible for administering three Acts:

- *Environment Protection Act 1970* (Vic)
- *Natural Environment Protection Council (Victoria) Act 1995*
- *Pollution of Water by Oil and Noxious Substances Act 1986* (**POWBONS Act**)

In addition, the EPA administers nine separate regulations, eight of which relate to the EP Act and one under the POWBONS Act:

- *Environment Protection (Environment and Resource Efficiency Plans) Regulations 2007*
- *Environment Protection (Fees) Regulations 2001*
- *Environment Protection (Scheduled Premises and Exemptions) Regulations 2007*
- *Environment Protection (Distribution of Landfill Levy) Regulations 2002*
- *Environment Protection (Industrial Waste Resource) Regulations 2009.*
- *Environment Protection (Residential Noise) Regulations 1997*
- *Environment Protection (Vehicle Emissions) Regulations 2003*
- *Environment Protection (Ships' Ballast Water) Regulations 2006*
- *Pollution of Waters by Oil and Noxious Substances Regulations 2002*

The EPA is also responsible for developing, supplementing and enforcing subordinate legislation in the form of:

- seven State Environment Protection Policies (**SEPPs**); and
- nine Waste Management Policies (**WMPs**).

More information about these policies is in part 5 below.

The EPA has developed a chart of its regulatory responsibilities under the EP Act which is at Appendix A.

4. REGULATORY OBJECTIVES

The EP Act makes explicit its purpose as ‘protection of the environment in Victoria having regard to the principles of environment protection’⁹, which are detailed in the Act.¹⁰ In administering the Act, the Parliament of Victoria has made its intention clear that regard should be given to the specified principles of environment protection.¹¹

The environment protection principles of particular relevance to this report are:

s 1C The precautionary principle

- (1) If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- (2) Decision making should be guided by—
 - (a) a careful evaluation to avoid serious or irreversible damage to the environment wherever practicable; and
 - (b) an assessment of the risk-weighted consequences of various options.

s 1D Principle of intergenerational equity

The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

s 1E Principle of conservation of biological diversity and ecological integrity

The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision making.

s 1K Principle of enforcement

Enforcement of environmental requirements should be undertaken for the purpose of—

- (a) better protecting the environment and its economic and social uses;
- (b) ensuring that no commercial advantage is obtained by any person who fails to comply with environmental requirements;

- (c) influencing the attitude and behaviour of persons whose actions may have adverse environmental impacts or who develop, invest in, purchase or use goods and services which may have adverse environmental impacts.

s 1L Principle of accountability

- (1) The aspirations of the people of Victoria for environmental quality should drive environmental improvement.
- (2) Members of the public should therefore be given—
 - (a) access to reliable and relevant information in appropriate forms to facilitate a good understanding of environmental issues;

The EPA’s specific powers, functions and duties are defined in section 13 of the EP Act.

While much of the EP Act primarily relates to pollution and industrial waste control and abatement, the EPA’s potential regulatory reach and powers are much broader as evidenced by its name. Three examples of this are:

- SEPPs. The EPA has a broad power to recommend and make into law State Environment Protection Policies. These can apply to:
 - > all Victoria or particular areas; and
 - > the environment generally or to any element or segments of the environment.¹²
- Neighbourhood Environment Improvement Plans (NEIPs). NEIPs are action statements that can be developed voluntarily by local communities in conjunction with the EPA and a local regulatory agency such as a council or catchment management authority to protect the local environment from impacts such as the cumulative effect of multiple pollution sources. The EPA can also require a local regulatory agency to develop a NEIP if it believes that the ‘beneficial uses’ of the local environment are not being protected.¹³
- Sustainability covenants. Sustainability covenant agreements can be entered into by the EPA with organisations or specific industry groups to reduce ecological impact and encourage more efficient use of resources such as water and physical materials. The EPA may also declare an industry to potentially have a significant impact on the environment, which can then trigger its compliance powers and enforcement activity.¹⁴

⁹ *Environment Protection Act 1970* s 1A.

¹⁰ *Environment Protection Act 1970* ss 1B-1L.

¹¹ *Environment Protection Act 1970* s 1A(3).

¹² *Environment Protection Act 1970* s 16.

¹³ *Environment Protection Act 1970* s 19AF and EPA Information Bulletin, *Neighbourhood Environment Improvement Plans – Developing a Voluntary Proposal*, May 2002.

¹⁴ *Environment Protection Act 1970* ss 49AA, 49AD and 49AO.

Against the background of the EP Act's environment protection principles, the definitions of 'environment', 'elements' and 'beneficial use' under section 4 of the Act are important to note:

- **beneficial use** means a use of the environment or any element or segment of the environment which—
 - (a) is conducive to public benefit, welfare, safety, health or aesthetic enjoyment and which requires protection from the effects of waste discharges, emissions or deposits or of the emission of noise; or
 - (b) is declared in State Environment Protection Policy to be a beneficial use;
- **element** in relation to the environment means any of the principal constituent parts of the environment including waters, atmosphere, land, vegetation, climate, sound, odour, aesthetics, fish and wildlife;
- **environment** means the physical factors of the surroundings of human beings including the land, waters, atmosphere, climate, sound, odours, tastes, the biological factors of animals and plants and the social factor of aesthetics;

When monitoring compliance and enforcement activity under the EP Act, it is best done by focusing on the regulator: the EPA. Understanding its general powers, functions and accountabilities will make monitoring of the EP Act and regulatory requirements more powerful.

The EPA regulatory frameworks and functions focused upon in this report relate to each element of the regulatory cycle:

- making regulations—for example, developing and making into law SEPPs and WMPs.
- implementing regulations—for example, compliance inspections, environment audits, infringement notices, and enforcement actions.
- reviewing regulations—for example, analysis and reviews such as that undertaken in the Auditor-General's June 2010 *Hazardous Waste Management* report, reviews of SEPPs and WMPs.

5. EPA'S DEVELOPMENT, IMPLEMENTATION AND REVIEW OF REGULATORY POLICIES

Underpinning most EPA interventions, including NEIPs, sustainability covenants, investigations, works approvals, licences, infringements, pollution and clean up notices, prosecutions and other enforcement activity, are the requirements of:

- State Environment Protection Policies (SEPPs)
- Waste Management Policies (WMPs)

Both policies are in fact statutory instruments which have the ability to be legally binding. They set state-wide pollution standards in a range of areas. These policies are explained in more detail below.

At the time of writing the EPA was conducting a review into the framework for SEPPs and WMPs to determine whether the way the EPA uses statutory policies is effective in modern environmental regulation.¹⁵

5.1 State Environment Protection Policies

At the time of writing the EPA's website stated that:

SEPPs express in law the community's expectations, needs and priorities for using and protecting the environment. They establish the uses and values of the environment that the community wants to protect, define the environmental quality objectives and describe the attainment and management programs that will ensure the necessary environmental quality is maintained and improved.¹⁶

As these instruments are required by law to be reviewed within 10 years of the policy coming into effect or being reviewed¹⁷, updating and tracking relevant dates is important. The EP Act requires any review to be undertaken in very specific ways, including elaborate consultation and assessment requirements that the community may want to participate in.

Table A sets out the SEPPs currently in force, when they are due for review and whether they have been reviewed as required. All SEPPs can be found on the EPA website.¹⁸

¹⁵ See http://www.epa.vic.gov.au/about_us/legislation/statutory-policy.asp

¹⁶ EPA website http://www.epa.vic.gov.au/about_us/legislation/sepps.asp on 29 June 2011.

¹⁷ *Environment Protection Act 1970* s19(1).

¹⁸ See http://www.epa.vic.gov.au/about_us/legislation/sepps.asp

²⁰ *Environment Protection Act 1970* s 18E.

²¹ See http://www.epa.vic.gov.au/about_us/legislation/iwmps.asp

5.1.1 Comments on SEPPs

The way in which SEPPs are written and laid out makes them inaccessible to the public and difficult to read and understand.

As SEPPs are subordinate legislation, the 'official' text of SEPPs appears in the *Victoria Government Gazette*. Relying on Gazette publications as a public version of a document makes them inaccessible for a number of reasons. For example, when SEPPs are amended, only the amendments appear in the Gazette, rather than a full version of the new SEPP (although this will change shortly through amendments to subordinate legislation rules). In addition, the way in which Gazettes are laid out makes it difficult for the public to find and understand the relevant SEPP. The EPA only publishes the Gazettal version of each SEPP, often as a series of amendments to the original text. The EPA should produce their own easy-to-read, consolidated version of all SEPPs on their website.

As noted in Table A, one SEPP is overdue for review and four are due to be reviewed this year. The EPA has commenced review of the statutory framework of SEPPs and has stated that individual SEPPs will be reviewed once the framework review is completed. This review is welcomed by the EDO as being a very necessary step in clarifying and modernising Victoria's environmental standards.

5.2 Waste Management Policies

Originally, industrial waste management policies (IWMPs) were introduced into the EP Act by the *Environment Protection (Industrial Waste) Act 1985* as one of the measures to improve the management of industrial wastes.

In 2002 the *Environment Protection Act 1970* was amended by the *Environment Protection (Resource Efficiency) Act 2002* to allow the EPA to develop broader WMPs, which supersede IWMPs. Existing IWMPs now continue to have effect as waste management policies until they are revoked.²⁰

Table B sets out the WMPs currently in force, when they are due for review and whether they have been reviewed as required. Information on WMPs can be found on the EPA website.²¹

TABLE A: STATE ENVIRONMENT PROTECTION POLICIES (SEPPS)

NAME	DESCRIPTION	ORIGINAL GAZETAL DATE	REVIEWS/ VARIATIONS SINCE ORIGINAL GAZETAL	TO BE REVIEWED BEFORE:
AIR				
Air Quality Management	Establishes the framework for managing emissions into the air environment in Victoria from all sources of air pollutants.	Gazette No. S99 21/12/2001	Nil	21/12/2011
Ambient Air Quality	Sets air quality objectives and goals for the whole State of Victoria.	Gazette No. 240 09/02/1999	Varied as part of Air Quality Management SEPP Gazette No. 240 21/12/2001	21/12/2011
LAND				
Prevention and Management of Contamination of Land	Aims to protect human health and the environment through the prevention of the contamination of land, and clean up and management of contaminated land.	Gazette No. S95 04/06/2002	Nil	04/06/2012
NOISE				
Control of Music Noise from Public Premises	Aims to protect residents from levels of music noise that may affect the beneficial uses of noise-sensitive areas, while recognising the community demand for a wide range of musical entertainment.	Gazette No. 43 03/08/1989	Varied 16/03/1999, Gazette No. G12 25/03/1999	25/03/2009 <i>(overdue for review: non-compliant with s19 of the Act)</i>
Control of Noise from Commerce, Industry and Trade	Aims to protect people in residential zones from the effects of noise in industrial areas positioned near residential zones.	Gazette No. s 31 15/06/1989	Varied Gazette No. G37 23/09/1992 Varied Gazette No. S183 31/10/2001	31/10/2011
WATER				
Waters of Victoria¹⁹	Aims to provide a co-ordinated approach for the protection and, where necessary, rehabilitation of the health of Victoria's water environments.	Gazette 26/2/1988 and 15/3/1988	Varied Gazette 06/02/1990 Varied Gazette No. S107 04/06/2003 Varied Gazette No. S210 05/10/2004	05/10/2014
Groundwaters of Victoria	Aims to maintain and, where necessary, improve groundwater quality to a standard that protects existing and potential beneficial uses of ground waters.	Gazette No. S160 17/12/1997	Gazette No. G12 21/03/2002	21/03/2012

¹⁹ This SEPP was originally made into law with the Gippsland Lakes and Catchment having its own policies prescribed in a Schedule F3:26/2/1988. Since this time the following catchment areas have been added: Waters of the Latrobe and Thompson River Basins and the Merriman Creek Catchments, Schedule F5: 22/10/1996; Waters of the Port Phillip Bay Schedule F6: 27/8/1997; Waters of the Yarra Catchment Schedule F7:22/06/1999; Waters of Western Port and Catchment Schedule F8: 02/11/1999. There are notable absences from the catchment areas listed e.g. Goulburn Broken Catchment.

TABLE B: WASTE MANAGEMENT POLICIES (WMPS)

NAME	DESCRIPTION	ORIGINAL GAZETTAL DATE	REVIEWS/ VARIATIONS SINCE ORIGINAL GAZETTAL	TO BE REVIEWED BEFORE:
WASTE MANAGEMENT POLICIES				
Ships' Ballast Water	Prevents the discharge of high risk ballast water into Victorian State waters to prevent new invasions and stop the spread of existing marine pests.	27/04/2004	Nil	01/07/2014
Siting, Design and Management of Landfills	Clarifies and strengthens the existing framework through promoting best practice and continuous improvement, in the way in which landfills in Victoria are planned, sited, designed and managed.	14/12/2004	Nil	14/12/2014
Solid Fuel Heating	Aims to improve air quality and protect the environment, human health and amenity by reducing emissions from solid fuel heating.	27/07/2004	Nil	27/07/2014
Used Packaging Materials	Aims to reduce environmental degradation arising from the disposal of used packaging and the conservation of raw materials.	28/03/2006	Nil	28/03/2016
INDUSTRIAL WASTE MANAGEMENT POLICIES (NOW WMPS)				
Movement of Controlled Waste between States and Territories	Implements the National Environment Protection Measure (NEPM) for the Movement of Controlled Waste between States and Territories.	Gazettal No. S222 06/12/2001	Nil	06/12/2011
National Pollutant Inventory	Aims to maintain and improve the ambient air, marine, estuarine and fresh water quality, minimise the environmental impacts associated with hazardous wastes and increase the re-use and recycling of used materials. It involves the collection of a broad base of emissions to air, land and water, particularly through reporting obligations on industrial facilities.	Gazette No. S107 06/10/1998	Varied Gazette S53 18/04/2001 (minor amendment)	06/10/2008 <i>(overdue for review: non-compliant with s19 of the Act)</i>
Protection of the Ozone Layer	Updates and refines Victoria's management framework for users of ozone-depleting substances to minimise consumption and emissions of these substances. Australian Government National regulations duplicate some requirements under this policy.	Gazette No. S193 05/11/2001	Nil	Before 05/02/2012 <i>Note: Policy came into effect in two stages; the first part on 5/11/01 and the second part three months later.</i>
Waste Acid Sulfate Soils	Aims to protect human health and the environment from this risk by providing a management framework and specific requirements for the management of acid sulfate soils in an environmentally responsible manner.	Gazette No. S125 18/08/1999	Nil	18/08/2009 <i>(overdue for review: non-compliant with s19 of the Act)</i>

5.2.1 Comments on WMPs

As can be seen from the table above, the Waste Acid Sulfate Soils Policy and the National Pollutant Inventory (NPI) do not appear to have been reviewed within the required 10-year period.

We note, however, that despite the EPA's lack of review of the Waste Acid Sulfate Soils Policy before 2009, the policy remains in force until revoked by an Order by the Governor in Council.²² Although the policy remains in effect, 10 years is a significant period of time and the policy should be updated as soon as possible to reflect current thinking. It appears that this may not happen until the EPA's statutory policy framework review has been completed.

The National Pollutant Inventory Waste Management Policy is based on a national policy agreed by the Commonwealth and all States and Territories to record and publicly report emissions from industrial sources called the National Environment Protection (National Pollutant Inventory) Measure. The Victorian policy notes that it should be amended as appropriate to take into account any amendments to the national policy.²³ EDO was advised by the EPA that three new substances have been added to the national policy and while these are currently not yet reflected in Victoria's NPI, a review of the NPI is planned for the near future to incorporate these amendments.

5.3 Solid industrial waste management plans

The EP Act requires Sustainability Victoria to make a draft solid industrial waste management plan by 1 July 2003, and every five years thereafter.²⁴ Sustainability Victoria must give the draft plan to the EPA for review and approval. The plan comes into force once the EPA has given its approval and is binding on any person involved in the generation, management or transport of solid industrial waste.

Despite a draft plan being produced in 2003 by Sustainability Victoria's predecessor EcoRecycle²⁵, the draft was never approved by the EPA and a plan has never been finalised. Despite a number of attempts to finalise a plan over the intervening seven years, it is unclear why this has not occurred. Sustainability Victoria has stated that a draft plan is now being finalised and was due to be released for public consultation in early 2011, however this has not happened as at time of writing.

Given the EP Act's requirement for the plan to be developed and reviewed every five years, if the plan is not to be released in the near future the EPA and Sustainability Victoria should review why the plan has not been developed and address those issues.

22. EPA, *Industrial Waste Management Policy (Waste Acid Sulfate Soils)* 17 August 1999, cl.3(a) http://www.epa.vic.gov.au/about_us/legislation/iwmps.asp#acid at 29 June 2011.

23. EPA *Industrial Waste Management Policy National Pollutant Inventory* 6 October 1998, cl.27 http://www.epa.vic.gov.au/about_us/legislation/iwmps.asp#npi at 29 June 2011.

24. *Environment Protection Act 1970* s 49L.

25. The 2003 draft is available on the Sustainability Victoria website http://www.sustainability.vic.gov.au/resources/documents/TZW_-_Towards_Zero_Waste_Full_Version_Draft_Solid_Industrial_Waste_Management_Plan_%282003%29.pdf at 29 June 2011.

5.4 Approvals and licences

The EP Act prevents any person operating an industrial premises declared to be a 'scheduled premises' to discharge waste or substances harmful to the environment, unless they have a works approval and/or licence issued by the EPA. Works approvals and licences have different functions. A **works approval** is required before a scheduled premises is built or modified, if that activity will increase emissions or waste into the environment.²⁶ A **licence** covers the ongoing operation of scheduled premises and sets waste and emission discharge limits.²⁷ Scheduled premises include activities such as waste treatment plants, intensive animal farming, mining, milk processing and power stations.

Table C sets out the number of works approvals issued by the EPA over the six-year period from 2004–05 to 2009–10, the number of licences amended/transferred, the number of planning referrals considered where environment protection was an issue, and the number of reviews determined by VCAT. The EPA informed us that data regarding the number of licences issued each year and the total number of current licences was not publicly accessible, unless obtained through a Freedom of Information request. The Victorian Competition and Efficiency Commission (VCEC) Victorian Regulatory Review annual reports do provide some limited data on licensing, although not for all years, as shown in Table C.²⁸

Licensing of industrial facilities to regulate pollution levels is an issue that directly affects the community. In our view, the public should be able to obtain this information without the need to make a Freedom of Information request.

The number of licences amended/transferred dropped significantly in the later two years. The EPA notes that this is due to the introduction of corporate licences rather than a drop in the number of premises being licensed. Corporate licences allow an operator to gain a single licence for multiple sites under their control.

Table C shows that works approvals declined 54% between 2004–05 and 2009–10 suggesting either a significant decline in industrial projects likely to cause significant environmental harms or impacts, or a decline in compliance by industry as a result of a perceived low risk of detection by regulators.

TABLE C: APPROVALS AND LICENCE DATA

	04–05	05–06	06–07	07–08	08–09	09–10
Works approvals issued ²⁹	61	68	70	58	46	28
Licences to discharge waste issued ³⁰	No data	14	No data	27	No data	25
Licences amended/transferred ³¹	235	212	251	286	88	65 ³²
Planning referrals considered where environment protection an issue ³³	805	697	643	712	609	552
Reviews determined by VCAT ³⁴	0	3	4	0	4	1

26. *Environment Protection Act 1970* s 19A.

27. *Environment Protection Act 1970* s 20.

28. Victorian Competition and Efficiency Commission Victorian Regulatory System Reports <http://www.vcec.vic.gov.au/CA256EAF001C7B21/0/6E3EA91660172374CA2573A2000DBD67?OpenDocument> at 29 June 2011.

29. EPA Report of Operations 2009-10 30 August 2010, 53. <http://epanote2.epa.vic.gov.au/EPA/publications.nsf/PubDocsLU/1352?OpenDocument> at 12 February 2011.

30. VCEC Victorian Regulatory System Reports above n 28.

31. PA report of operations 2009-10 above n 29, 53.

32. Note that the VCEC Victorian Regulatory System Report 2009-10 states that 522 licences were 'renewed' in that year. The reason for the difference in figures is not known.

33. EPA report of operations 2009-10 above n 29, 53.

34. EPA report of operations 2009-10 above n 29, 53.

5.5 The role of the Victorian Civil and Administrative Tribunal under the EP Act

Companies and individuals who are aggrieved by the refusal of, or terms of, a works approval to discharge/treat waste or pollutants can appeal the decision to the Victorian Civil and Administrative Tribunal (VCAT).³⁵

Similarly, if a licence holder is aggrieved by the EPA revoking, suspending, or imposing particular conditions on a licence for premises that might present a risk to the environment, they can appeal the decision to VCAT.³⁶ Generally speaking, a works approval and demonstrated compliance with it will always precede the granting of a licence.

Furthermore, community groups, not-for-profit organisations and other interested corporations and individuals who can establish themselves as an 'aggrieved person' can appeal to VCAT against a decision of the EPA within 21 days of the granting of a works approval, or in very limited cases the granting of a licence, subject to satisfying certain statutory criteria.³⁷

As the EPA data in table C above shows, very few review applications have come before VCAT relating to works approval and licence review applications. The EDO's own research revealed only 15 cases that had been decided under the EP Act by VCAT over a four-year period, between 2005–06 and 2008–09.

Five of these cases related to septic tanks/wastewater treatment under sections 36A, 36B, 36D of the Act. The remaining 10 cases were all relating to applications to review the grant of a works approval or licence under sections 33, 33A, 33B, and 33C. This roughly correlates to the 11 reviews reported by the EPA over the same period.

Of these 15 review applications:

- eight were initiated by third-party community groups or concerned individuals. None of these was successful;
- five were initiated by licence or works approval holders/applicants against local government or EPA decisions made under the EP Act. All of these applications were successful in changing original decisions in the applicants' favour; and
- two related to procedural or jurisdictional questions.

Without further investigation it is difficult to determine why the number of appeals is so low. It may be that EPA licence conditions are reasonable and accepted by operators and therefore appeals are not pursued. However, discussion by the Ombudsman in relation to the Cranbourne landfill indicates that the EPA has in the past been reluctant to impose conditions on works approvals and licences which are likely to lead to an appeal in VCAT.³⁸ The comments by the Ombudsman relate to matters that occurred a number of years ago and so this culture may have changed, however as a regulator the EPA must be very careful that the threat of appeal plays no part in its decisions as to what environmental standards to impose on industry.

35. *Environment Protection Act 1970* s 33.

36. *Environment Protection Act 1970* s 33A.

37. *Environment Protection Act 1970* s 33B.

38. Ombudsman Victoria above n 2.

6. EPA'S COMPLIANCE MONITORING ACTIVITY

6.1 Auditor-General's findings

In the Victorian Auditor-General's Office performance audit of the EPA's hazardous waste management regulation³⁹, the Auditor-General made the following remarks about a desirable approach to compliance monitoring:

Compliance monitoring and enforcement activities are an essential part of regulation. They provide the regulator and the community with assurance about how well licensees are adhering to regulations, and they provide a framework to address and deter non-compliance.

*Effective compliance monitoring and enforcement should enable the regulator not only to identify and analyse regulatory risk, but also to prioritise the risks and undertake compliance activities to mitigate these risks. This would also enable consistent and transparent enforcement decisions where non-compliance is detected.*⁴⁰

Against this background, the Auditor-General made the following damning conclusion about the EPA's performance:

*...serious deficiencies pervade most of its monitoring and compliance activities which, combined with ineffective enforcement, provide little assurance that the EPA is effectively regulating hazardous waste.*⁴¹

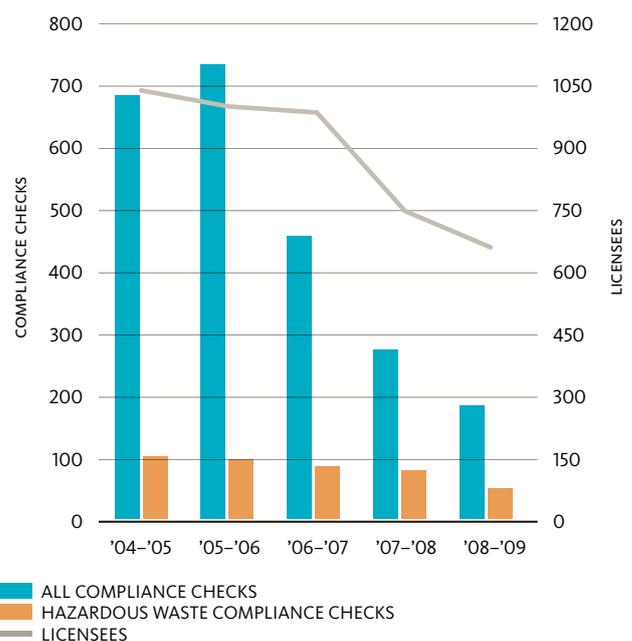
Using the EPA's compliance monitoring activities of hazardous waste as one example of the EPA's performance, the report concludes:

Significant limitations with [the EPA's] compliance monitoring are:

- a previously decentralised program of inspections not supported by clear, risk-based rationales
- compliance activities have significantly decreased since 2007–08 while the opportunity and incentive for non-compliance has increased
- no monitoring of hazardous waste that is recycled or reused
- limited review of licensee's annual performance statements and the results of environmental audits
- limited assurance that hazardous waste transporters' vehicles are safe and compliant
- no clear rationale for the limited use of financial assurances that protect the state from bearing the costs of non-compliance.⁴²

Compliance inspections are also an essential part of an effective regulatory monitoring program. The Auditor-General's report includes a revealing graph about the EPA's overall levels of compliance monitoring activity, demonstrating a significant decline in recent years (see figure 1).

**FIGURE 1:
COMPLIANCE MONITORING ACTIVITY
2004-05 TO 2008-09**



Source: Hazardous Waste Management, Victorian Auditor-General's report June 2010, page 16

39. Victorian Auditor-General's Office, above note 1.
 40. Victorian Auditor-General's Office, above note 1, 14.
 41. Victorian Auditor-General's Office, above note 1, 14.
 42. Victorian Auditor-General's Office, above note 1, 14.

The Auditor-General made the following comments with respect to this decline:

The decline in the number of inspections that the EPA has undertaken since 2005 is partly explained by the changes in 2007 to the Environment Protection (Scheduled Premises and Exemptions) Regulations 2007. These changes exempted some industries from needing licences, and therefore from requiring inspections.

Aside from the changes to the regulations, the EPA advised that the reason for the decline in inspections was due to its conscious decision to redirect effort to focus on other priorities. The EPA could neither identify these priorities, nor provide a rationale for them being a higher priority than compliance monitoring.

The importance of compliance monitoring for hazardous waste licensees was highlighted in a review that the EPA commissioned in August 2009. This review, which assessed compliance with licence conditions at 28 high-risk sites involved with hazardous waste, identified very high levels of non-compliance. The review found that:

- *only five licensees, or 18 per cent, achieved full compliance*
- *around half the remaining non-compliant licensees had significant environmental hazards.*

While the review focused on high-risk licensees, the results indicate the likelihood of widespread non-compliance across other hazardous waste licensees.⁴³

6.2 EPA's changing approach

The EPA does not normally release compliance monitoring data, however the recent Krpan Report of the EPA's compliance and enforcement contains some updated information on the EPA's compliance monitoring activity.

Figure 2 shows the continued low compliance inspection rate.

The Krpan report notes that there has been a move over the last 12 months to conduct more on-site inspections.⁴⁴ The report states that 'the EPA has recognised the need for a more rigorous and consistent method of inspection and is developing inspection protocols as part of its compliance reforms'.⁴⁵ It also highlights concerns that low inspection numbers and poor data quality means that the EPA is not able to effectively determine the current state of compliance.⁴⁶

In a recent positive sign the EPA has commenced a series of 'blitzes' on specific hot spots to verify compliance. In 2011 the EPA has publicly announced four blitzes that occurred in the first half of the year in both metropolitan and rural areas covering more than 60 sites.⁴⁷ The EPA stated that the inspections are 'part of a larger EPA compliance operation for the 2010–11 financial year which will see 200 licensed sites inspected'.⁴⁸

43. Victorian Auditor-General's Office, above note 1, 16.

44. Krpan, above n 3, 103.

45. Krpan, above n 3, 103.

46. Krpan, above n 3, 106.

47. EPA Media Releases: 'EPA Licence Checks Planned For South West In February' 28 January 2011; 'EPA Targets 25 Industrial Sites For Notice Compliance' 29 March 2011; 'EPA Licence Inspections Set For Mid-May' 4 May 2011; 'Southeast Compliance Blitz Set For June' 16 May 2011, at http://www.epa.vic.gov.au/about_us/news.asp

48. EPA Media Release 'EPA Licence Inspections Set For Mid-May' 4 May 2011.

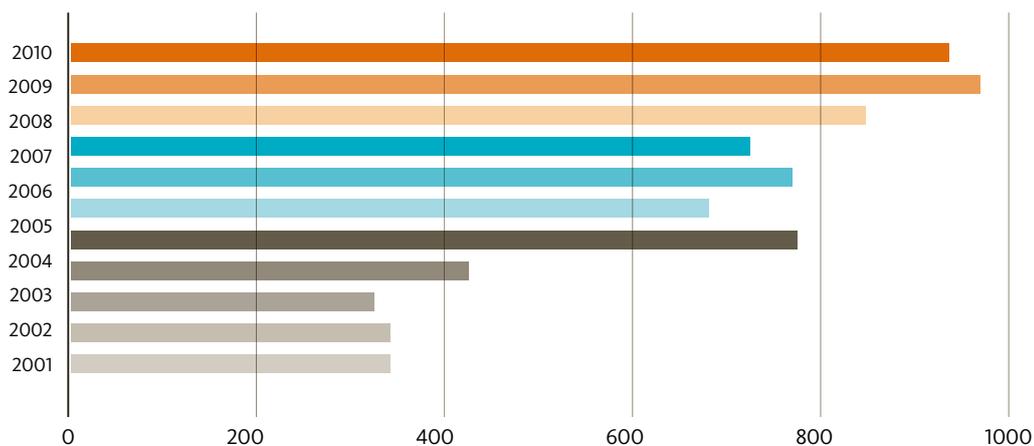
Another example of the EPA's increased focus on compliance monitoring is EPA's announcement in June 2010 that after a poor compliance track record, it had revoked Mobil Refining Aust Pty Ltd's accreditation to deal with certain hazardous wastes without needing to successfully apply for works approvals from the EPA. This in effect means that it has judged Mobil's risk management systems as insufficient to prevent possible environmental and public harms.

The EPA cited poor environmental performance at Mobil's Altona plant and the EPA's CEO, John Merritt, said it was 'less than impressed with Mobil's track record in which there has been a number of incidents at the site, all with the potential for environmental and community risk'. He said that an accreditation licence was a privilege only given to companies committed to continuous improvement in their environmental performance. Mr Merritt also stated, 'It is EPA's belief that Mobil's on-site practices have not demonstrated a high level of environmental performance to justify accreditation'.⁴⁹

Compliance monitoring is a crucial step in ensuring licensed and non-licensed premises are complying with their environmental obligations. The EPA's recognition of that fact is a welcome shift after five years of woefully inadequate compliance monitoring activity.

The EPA's increased focus on compliance monitoring should be reflected from next year in its compliance inspection figures, and hopefully result in a flow-on effect of increased enforcement activity over the coming years.

**FIGURE 2:
NUMBER OF COMPLIANCE ASSESSMENTS CONDUCTED
2000-10**



Source: Compliance and Enforcement Review: A Review of EPA's Approach, Stan Krpan, February 2011, p 102.

49. EPA media release 'Mobil's Accredited Licence Cancelled' 3 June 2010 at <http://epanote2.epa.vic.gov.au/EPA/media.nsf/7957c9b407150e5f4a256695000c4970/816958ee534f5dd4ca257736007f60fe?OpenDocument>

7. EPA'S ENFORCEMENT POLICY AND ACTIVITY

7.1 Enforcement Policies

In 2006 the EPA (under its former Chairman, Mick Bourke) published an Enforcement Policy.⁵⁰ Although the policy provided a reasonably comprehensive guide to its powers, it gave little guidance as to when and how those powers should be used.

The Victorian Auditor-General made the following comment about the Enforcement Policy in his June 2010 report *Hazardous Waste Management*:

While the EPA has an enforcement policy, it lacks the detail sufficient to provide authorised officers with clear guidance to enable informed, transparent and consistent decisions. The enforcement policy outlines the enforcement measures available to its authorised officers. However, it does not include guidance on appropriate penalties and graduated enforcement responses. Graduated responses are fundamental to effective enforcement, guiding staff on sanctions or actions that are proportionate to the risk that the non-compliance poses. The lack of graduated responses increases the risk that inappropriate and inconsistent enforcement action will occur. This audit sought to undertake a detailed analysis of enforcement actions relating to hazardous waste. However, given the significant limitations with the information systems, it was not possible to distinguish hazardous waste cases from other enforcement cases. The EPA was unable to provide a valid sample for examination.⁵¹

In the Victorian Ombudsman's report, *Brookland Greens Estate—Investigation into Methane Gas Leaks*⁵², the Ombudsman found systemic failures in the enforcement and management of a Cranbourne landfill. The Ombudsman made a number of recommendations, but those relevant to this review included that the EPA:

- strengthen compliance and enforcement and its knowledge management;
- improve compliance and enforcement decision-making processes to make them clearer and more consistent; and
- use and apply EPA enforcement tools and policy better.

In light of the reports of the Auditor-General and Ombudsman, the EPA announced in August 2010 that it would review its enforcement policy, stating:

We are on a journey to become a modern environmental regulator that meets the aspirations of the Victorian community and future environmental challenges. That transformation will enable us to be effective, adaptable, transparent and most of all accountable.⁵³

The EPA commissioned a review of the enforcement policy by Neil Gunningham, and also directed Stan Krpan to review the enforcement policy in his broader compliance and enforcement review. Both reviews found that the enforcement policy did not assist officers in making enforcement decisions and was little more than a description of the EPA's role and the enforcement tools available to it. Both reviews recommended a new enforcement policy be developed.⁵⁴

In response the EPA has developed a new enforcement policy, which was just released at the time of writing in June 2011⁵⁵. The policy picks up on most of the recommendations made in the Krpan report. It is a 'risk based and responsive regulatory model' which allocates resources to areas that pose the biggest risk to the environment and health, and to where the biggest difference can be made.⁵⁶ Risk is defined as a combination of consequence (the risk or harm to health or the environment) and likelihood (the chance that non-compliance will occur).⁵⁷

50. EPA Victoria Enforcement Policy June 2006 at [http://epanote2.epa.vic.gov.au/EPA/publications.nsf/d85500a0d7f5f07b4a2565d1002268f3/39a0493666adf94ca2571a2002cdb9e/\\$FILE/384.3.pdf](http://epanote2.epa.vic.gov.au/EPA/publications.nsf/d85500a0d7f5f07b4a2565d1002268f3/39a0493666adf94ca2571a2002cdb9e/$FILE/384.3.pdf).

51. Victorian Auditor-General's Office, above note 1, 21.

52. Ombudsman Victoria above n 2.

53. EPA media release 'EPA tackles new look environmental enforcement' 31 August 2010 at <http://epanote2.epa.vic.gov.au/EPA/media.nsf/7957c9b407150e5f4a256695000c4970/5e19ac514e2ff9c7ca25779000097e68?OpenDocument>.

54. Krpan, above n 3, 204-206.

55. EPA Victoria Compliance and Enforcement Policy June 2011 at <http://www.epa.vic.gov.au/compliance-enforcement/ce-policy.asp> 28 June 2011.

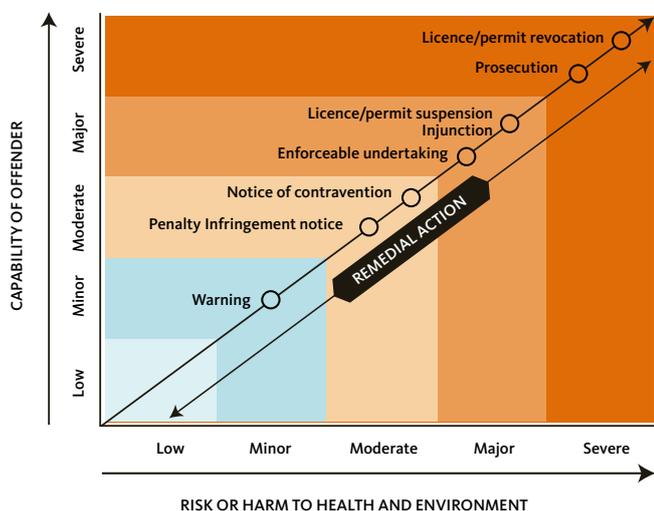
56. EPA Compliance and Enforcement Policy 2011 above n 55, 6.

57. EPA Compliance and Enforcement Policy 2011 above n 55, 6.

The new enforcement policy provides a much clearer statement of when and how enforcement actions should be used by the EPA. It sets a scaled approach to sanctions, depending on the level of risk of harm to the environment, and the culpability of the offender (as shown in figure 3 below).

The level of guidance contained within the policy should give much greater assistance to EPA officers in determining which monitoring and enforcement actions are desirable and necessary. The EDO is hopeful that implementation of the new enforcement policy will result in greater deterrence to polluters, and a strengthened ability to make good any harm caused.

**FIGURE 3:
EPA'S ENFORCEMENT POLICY RESPONSE SCALE**



Source: EPA Victoria Compliance and Enforcement Policy June 2011 p21.

7.2 Review of EPA enforcement activity

In order to judge whether the EPA is effectively enforcing the EP Act we have reviewed its enforcement activity. We have done this by looking at the EPA's own Report of Operations by financial year; VCEC's annual Victorian Regulatory System Reports; the Victorian Auditor-General's June 2010 report; and the Krpan report.

One of the difficulties in reviewing the EPA's enforcement activity is that there is no single report which gives a comprehensive overview of this activity and therefore it is very difficult to get a complete picture of the enforcement that the EPA has undertaken.

The EDO has developed a table which sets out the data we consider the EPA should report on annually (Appendix C), using the existing enforcement framework and EPA's own summary of financial penalties in 2006.⁵⁸ The EDO recommends that the EPA use this table (including relevant sections of the EP Act) to report against each financial year and make transparent to the community where the bulk of its resources are expended in terms of compliance monitoring and enforcement activity. At present we were not able to complete this table as the relevant data is not publicly released by the EPA.⁵⁹

In the absence of readily accessible and transparent information about EP Act enforcement activity, the following tables of enforcement activity, prosecutions and numbers of offences by type of offence put together by the EDO can, on an interim basis, inform the community about how the EPA is utilising its regulatory powers to improve and protect the environment.

TABLE D: EP ACT ENFORCEMENT ACTIVITY 2004–2010

ACTIVITY	04–05	05–06	06–07	07–08	08–09	09–10
Infringement Notices issued ⁶⁰ in relation to:						
Industry	80	85	78	55	58	57
Waste Transport	2	3	2	1	0	0
Motor Vehicles ⁶¹	138	180	107	148	249	298
Litter ⁶²	18,223	22,089	20,804	18,459	19,468	15,118
Clean-up notices	No data ⁶³	52	44	32	57	44
Pollution Abatement Notices	No data	239	197	101	128	127

58. EPA Enforcement Policy 2006, above n 50, 19.

59. Although the EPA issues a media release notifying the community of when it has issued an infringement notice or completed a successful prosecution, other enforcement data is less accessible.

60. EPA report of operations 2009-10 above n 29, 54.

61. Enforced mainly by Victoria Police and VicRoads.

62. Enforced mainly by local government. Since 1 July 2006 the EPA has changed its reporting of litter notices to a net figure.

63. The only figure available for the 04/05 year is 312 for clean up and pollution abatement notices combined.

7.2.1 Breaches of the EP Act

As a first step in assessing the adequacy of enforcement action, it is useful to know the number of breaches of the EP Act that occur each year. The EPA is made aware of thousands of potential breaches each year both through the public's reporting of potential breaches and through its own investigations, but only a limited amount of data on these is currently publicly released by the EPA.

Table E shows the number of pollution incidents reported by the public and regulated industries to the EPA each year.

With regard to Table E, it is not known what the EPA categorises as a 'major breach' or whether it is a breach of the EP Act only or the POWBONS Act as well.

In the past the EPA has not released pollution report data beyond the total number of pollution reports received. Indeed when we requested more comprehensive data regarding the number and types of pollution reports we were informed we would need to do a Freedom of Information request. This should not have been necessary as only aggregate de-identified data was being requested, not individual site data. However the Krpan report, released in February this year, does give a more comprehensive view of the nature and types of pollution reports over the last few years.⁶⁴

Importantly to note when analysing enforcement against suspected breaches, a substantial number of reports are received each year in relation to a small number of premises. In the last five years, 22–31 per cent of all reports have related to just ten sites.⁶⁵

Although this can reflect a large number of complaints about a single incident which would only require a single enforcement action, in some cases it reflects multiple reports about the same site for separate incidents which should result in multiple enforcement actions.

Another telling figure is the number of pollution reports that have been confirmed by the EPA as being caused by a particular site. Table E shows this number. While the number of reports that relate to unknown sources is significantly higher (for example 3123 unknown versus 583 confirmed in 2009–10), the number of known pollution incidents each year is significant and is not reflected in the enforcement activity.

Data that would have been useful in this analysis is the number of inspections that the EPA has conducted as a result of pollution incident reports, however the Krpan report notes that the EPA's internal reporting system is not able to record this information⁶⁶; a significant weakness.

The enforcement activity figures in Table D reveal a significant drop in enforcement activity and confirm the dramatic drop in compliance activity identified by the Auditor-General. Infringement notices issued for industrial pollution offences have dropped 27.5 per cent between 2004 and 2010. Pollution abatement notices have dropped 40.7 per cent (although clean up notices have remained generally steady apart from a dip in 2007–08). This outcome is difficult to reconcile with Victoria's growth in population and economic strength over recent years. In addition, it does not correlate with the number of pollutions incidents reported to the EPA which have risen since 2004–05 with a peak in 2007–08, and is particularly concerning when compared with the number of confirmed pollution reports shown in Table E.

TABLE E: POLLUTION REPORTS (POLLUTION INCIDENTS REPORTED TO THE EPA) 2004–2010

	04–05	05–06	06–07	07–08	08–09	09–10
Total pollution reports received ⁶⁷	7106	7,343	8,248	8,565	8,017	7,792
'Major breaches' reported to the EPA ⁶⁸	No data	250	230	248	270	No data
Pollution reports confirmed by the EPA ⁶⁹	729	758	673	859	600	583

64. For a comprehensive review see Chapter 5 of the Krpan report above n 3, particularly 5.8–5.9.

65. Krpan, above n 3, Table 5.3, 45.

66. Krpan, above n 3, 46.

67. Data is from the EPA report of operations 2009-10 above n 29, 53; apart from the 04/05 year which is from the Krpan report above n 3. The remainder of the figures in the Krpan report differ slightly from the EPA report of operations but the reason is not known.

68. Presentation by John Merritt Chief Executive Officer EPA, at 'Talking Toxic Waste' EDO Seminar 24 August 2010. Powerpoint slides can be accessed at http://www.edo.org.au/edovic/edo_seminars.html

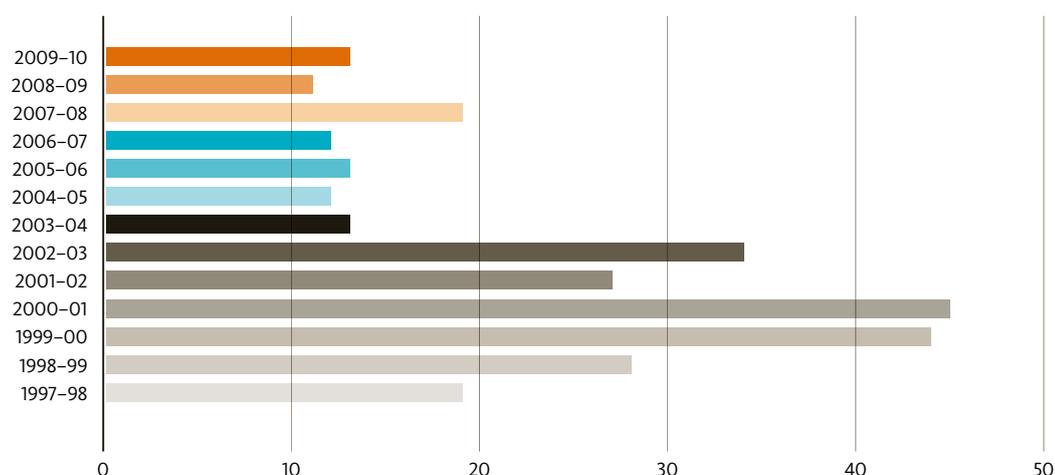
69. Krpan, above n 3, Table 5.3, 45.

The information in Table F above provides an overview of the total number of prosecutions undertaken by the EPA each year. As can be seen from the tables above, it is a tiny fraction of the number of pollution incidents reported to the EPA each year, and very small fraction even of the major breaches reported each year.

For example, in the 2008–09 year (the most recent data available) prosecutions equate to just three per cent of the major breaches reported to the EPA.

Figure 4 below, taken from the Krpan report, reveals that prosecution activity has dropped significantly since 2002–03.

**FIGURE 4:
NUMBER OF PROSECUTIONS OVER THE PAST 10 YEARS**



Source: Compliance and Enforcement Review: A Review of EPA's Approach, Stan Krpan, February 2011, p 173.

TABLE F: EPA PROSECUTIONS DATA 2004-2009⁷⁰

YEAR	TOTAL NUMBER OF PROSECUTIONS	NUMBER OF PROSECUTIONS RESULTING IN A CONVICTION, FINDING OF GUILT OR FINE	NUMBER OF PROSECUTIONS OF COMPANIES (AS OPPOSED TO INDIVIDUALS)	NUMBER OF PROSECUTIONS WHERE DIRECTORS/ MANAGERS WERE PROSECUTED ⁷¹	NUMBER OF COMMUNITY ENVIRONMENT INITIATIVE ORDERS MADE WHEN FINDING OF GUILT OR CONVICTION
2004-05	12	10	9	0 (0%)	5 (50%)
2005-06	12 ⁷²	11	5	1 (20%)	4 (36%)
2006-07	12	12	9	0 (0%)	9 (75%)
2007-08	17	13	9	3 (33%)	8 (61%)
2008-09	10	10	8	0 (0%)	8 (80%)
2009-10	13	13 ⁷³	10	3 (23%)	4 (30%)

70. The data in this table is taken from the EPA's 'Prior Convictions Register by Financial Year' which on its website is described as detailing 'Prosecutions undertaken by the EPA'<http://www.epa.vic.gov.au/compliance-enforcement/enforcement.asp>. The number of prosecutions listed is not exactly consistent with the information contained in the Victorian Competition and Efficiency Commission's Victorian Regulatory System Annual Overview reports, as the EDO has not double-counted separately listed prosecutions against the same company on the same day.

71. This figure does not include instances where a ship master has been prosecuted under the POWBONS Act in conjunction with the owner of a polluting ship.

72. Four of these prosecutions related to the one company's hazardous waste activity in Campbellfield.

73. The judgement for one of the prosecutions in this year (Midland Environmental Services) was reserved to August 2010 but it has been counted here as the remainder of the prosecution occurred in the 2009/10 year.

The Krpan report notes that this drop in activity broadly coincides with amendments to the EP Act to re-classify the majority of offences under the EP Act as indictable, which led to increased scrutiny of potential prosecutions by EPA, and therefore a drop in prosecutions.⁷⁴ However the Krpan report also notes the findings of the Ombudsman, corroborated by the views of EPA staff, that until recently enforcement has been neglected at the EPA and in some cases actively discouraged. Reasons included the costs of prosecution, the desire to avoid losing prosecutions, a risk-averse and conservative culture, and a lack of willingness and confidence to tackle big businesses.⁷⁵ The Krpan report states ‘the significant reduction in prosecutions since 2000 [has] been unwarranted and potentially counterproductive to the level of compliance’.⁷⁶

It is difficult to gain clear insight into the vigilance of the EPA in its prosecutions, because data regarding confirmed major breaches that the EPA was aware of but decided not to prosecute and the reasons why the EPA did not prosecute were not accessible. The EPA has stated that it will release more enforcement data in the future as recommended in the Krpan review.⁷⁷

In response to the Auditor-General’s report, the Ombudsman’s report and the Krpan report, the EPA has stated that it is increasing its focus on prosecutions. Early indications from the most recent year support that statement, with a modest increase in prosecutions in 2010–11 compared with previous years. Sixteen successful prosecutions were undertaken in the last financial year, the largest number of successful prosecutions conducted by the EPA in the past seven years.⁷⁸ We hope that future editions of this report will reveal a much greater emphasis on prosecutions as result of the improvements occurring within the EPA.

7.3 Number of times the EPA goes behind the ‘corporate shield’ when prosecuting offences

The EP Act provides that when a corporation commits an offence under the Act each director or manager of the company is also guilty of the offence and liable to a penalty.⁷⁹

In Table F in the previous section, the EDO has tracked the number of times directors or managers of a company were prosecuted instead of, or at the same time as, the company, in relation to the same circumstances for offences against the EP Act. This has been done to highlight the importance of going behind the ‘corporate shield’ to make the individuals responsible for the company and its actions accountable.

The EDO is disappointed to note the very low number of prosecutions in which both the company and its directors/management were prosecuted in the past six years. It appears from early data of the 2010–11 financial year that only one director has been prosecuted. In 2008–09 there were no prosecutions of directors despite some larger corporations being successfully prosecuted such as Mobil and Caltex. The financial penalties imposed on such companies relative to their turnover and size are diminished in impact without managers and directors being held to account. It appears that the EPA is more likely to prosecute smaller companies’ directors/ managers, and routinely prosecutes (often foreign) ships’ masters.

The Krpan report notes an ‘unwritten policy’ within the EPA in the past to prosecuting directors.⁸⁰ It recommends clearer guidance be included in the EPA’s enforcement policy for when directors should be prosecuted as well as or in lieu of a company.⁸¹

Regulators need encouragement to do more of this, to bring home to individuals their personal responsibility and the possible flow-on effects on those individuals’ eligibility to continue to be a director or person concerned in the management of a company under corporations law. The EPA should ensure that it uses this power wherever possible, particularly for serious offences committed by larger corporations.

74. Krpan, above n 3, 173.

75. Krpan, above n 3, 186-187.

76. Krpan, above n 3, 187.

77. Meeting between the EPA and EDO, 8 March 2011.

78. The EPA issues a media release for every successful prosecution. As the EPA has not yet released its prosecution figures for the year, the EDO has collated this data from the media releases.

79. Environment Protection Act 1970 s 66B.

80. Krpan, above n 3, 178.

81. Krpan, above n 3, 201.

7.4 Use of court penalties to support public environment protection activities

Section 67AC of EP Act allows the courts to order offenders to take certain actions in addition to or instead of a penalty, such as publicising the details of the offence.⁸² In particular the court can order the offender to contribute to a specific community project to improve the environment even if it is unrelated to the offence. The EDO has examined how often prosecutions by the EPA resulted in orders requiring companies and individuals found guilty of environment-related offences to pay money for community-based environment protection initiatives (shown in Table F). The EDO has found the trend for such orders to be made against companies has increased over the five years to 2008–09, but dropped in 2009–10. Early data from the 2010–11 financial year indicates that five s67AC orders have been made. Such orders are rarely made against individuals.

The Krpan report notes that average penalties under s67AC orders are significantly higher than average fines imposed.⁸³

There is little transparency around how these orders are made. The EP Act allows orders to be made on application of the EPA, or the court.⁸⁴ However in practice orders are negotiated between EPA and offenders before the case proceeds. Unlike enforceable undertakings (see section 7.5 below), these orders are not designed to be negotiated agreements, but are penalties imposed by the court.

The EPA has indicated that many companies are reluctant to have these orders imposed because the cost is generally higher than a fine. The EPA has stated that this type of order is only effective when the offender has significant financial resources and has expressed a willingness to carry out the order.⁸⁵ However the EPA has stated that it remains supportive of these orders and has taken steps to improve the program.⁸⁶

PROJECTS FUNDED AS PART OF PENALTIES UNDER THE EP ACT

PROSECUTION OF WHELAN THE WRECKER

In 2008, Whelan the Wrecker Pty Ltd pleaded guilty in the Latrobe Valley Magistrates' Court to dumping industrial waste from a demolition site at an unlicensed site. This was a contravention of s 27A(2)(a) of the EP Act, and the court ordered the company to pay \$40,000 towards improving water quality and biodiversity at the Jack and Albert rivers and the Morwell River Neighbourhood Environment Improvement Plan (NEIP). Whelan the Wrecker was also ordered to publish a notice about its prosecution disclosing the offence, its consequences and the court's orders.

PROSECUTION OF MOBIL REFINING AUSTRALIA PTY LTD

In late 2008, Mobil Refining Australia Pty Ltd pleaded guilty in the Melbourne Magistrates' Court to causing environmental hazard, a contravention of s 27A(1)(c). Mobil was ordered to make payments totalling \$350,000 to support three separate projects: the creation of a wetland by a school group, the establishment of Drain Spotter Teams by Melbourne Water and the enhancement of a marine sanctuary by a care group. Mobil was also ordered to publish a notice about the proceedings.

ENVIRONMENT PROJECTS FUNDED AS A RESULT OF COURT ORDERS FOLLOWING EPA CHARGES IN 2008–2010

Valuable examples of public environment benefit penalties imposed by the court upon companies and individuals include:

\$80,000 paid in three instalments over 12 months for areas in the western suburbs of Melbourne for a sustainability education program for 12 schools and for environment amenity improvements to a reserve within the Heidelberg West Community.

\$25,000 toward a multidisciplinary investigation of the dolphin population in Gippsland Lakes, Western Port Bay and Port Phillip Bay.

\$40,000 toward a Brooklyn environment and sustainability program.

\$55,000 toward a platypus monitoring program for the Yarra River.

\$60,000 to Mt Alexander Sustainability Group Inc. for its 'Pathways to a Sustainable CO2 Future' project aimed at reducing household resource use.

\$60,000 towards endangered frog recovery in the City of Whittlesea.

\$90,000 toward the Western Port Seagrass Partnership.

82. Environment Protection Act 1970 s 67AC.

83. Krpan, above n 3, 180.

84. Environment Protection Act 1970 s 67AC(3).

85. Meeting between the EPA and EDO, 8 March 2011.

86. Krpan, above n 3, 190.

Section 67AC orders are a valuable tool in enforcement and their use by the EPA should be encouraged by developing greater guidance for their use, and educating courts about their use and value (particularly the Magistrates' Court, where almost all EP Act prosecutions are conducted).

The following case studies highlight examples of environment projects funded as part of penalties imposed on offenders under the EP Act. The EDO encourages the EPA, the court system, judicial members and community members to consider projects that would add considerable value to the environment if they were supported by way of penalties imposed upon those breaching the EP Act and its regulations.

7.5 What offences does the EPA focus upon when prosecuting/protecting the environment?

The EDO has also examined the EPA's prosecutions register over the last six years to identify (as best it can from the publicly available data) the number of offences the EPA has alleged and prosecuted corporations and/or individuals for (set out in Table G). Although the number of offences alleged (charges) is much greater than the number of corporations or individuals actually prosecuted, it does help us to identify where enforcement effort/resources have been targeted and highlight where the gaps in enforcement activity may be.

TABLE G: CHARGES INITIATED BY EPA FROM 2004–05 TO 2009–10

TYPES OF OFFENCES	NO. OF CHARGES 2004–05	NO. OF CHARGES 2005–06	NO. OF CHARGES 2006–07	NO. OF CHARGES 2007–08	NO. OF CHARGES 2008–09	NO. OF CHARGES 2009–10	5-YEAR TOTAL NO. OF CHARGES
Discharge of oil/oily mixture from a ship into state waters: s 8 of POWBONS Act	2	2	2	2	0	0	8
Disposal of garbage into state waters: s 23B of POWBONS Act	0	0	0	2	0	0	2
Offences relating to licences and the discharge of waste: s 27 of EP Act	3	1	1	3	5	3	16
Breach of industrial waste rules offences: s 27A of EP Act	6	37	11	7	4	5	70
Failure to comply with a pollution (including noise) abatement notice offences: s 31A of EP Act	1	0	1	0	0	1	3
Pollution of water offences: s 39 of EP Act	4	2	3	0	3	4	16
Pollution of atmosphere offences: s 41 of EP Act	2	1	0	0	2	1	6
Pollution of land offences: s 45 of EP Act	0	3	2	0	0	1	6
Litter offences: s45E and 45F of EP Act	0	0	0	0	2	0	2
Motor vehicle-related offences: s 48B & s 55AC of EP Act	0	4	0	0	0	0	4
False or misleading information offences: s 59D of EP Act	1	2	0	0	0	0	3
Non-compliance with a clean-up notice: s 62A of EP Act	0	0	1	0	1	3	5
Total charges per year	19	52	21	14	17	18	141

Note: The figures in the 'No. of charges' columns represent all the charges brought against defendants. Defendants were not necessarily found guilty or convicted of all these charges.

By analysing all publicly available EPA prosecution registers between 1 July 2004 and 30 June 2010, the EDO was only able to find a total of 141 charges (an average of 23 per year) reported as laid by the EPA across all of the offences for which it has responsibility for monitoring compliance and enforcement activity.

The EDO notes a significant increase in charges initiated in 2005–2006, due to multiple breaches of the industrial waste rules for unlicensed dumping of waste by one company on multiple occasions across the year.

7.6 Enforceable undertakings

Since 2006 the EPA has the power to accept enforceable undertakings from corporations and individuals believed to be in breach of statutory environment protections.⁸⁷ Enforceable undertakings are ‘a set of promises in which an alleged offender voluntarily undertakes to perform various tasks in settlement for contravention of the Act’⁸⁸. In other words, the EPA agrees not to prosecute an offender if the offender makes an agreement to do certain activities such as investigate the cause of the breach, remedy the breach and implement restoration programs. The EPA has developed and published in the *Victoria Government Gazette* guidelines for when and how enforceable undertakings might be appropriate.⁸⁹

The EPA has established a register of enforceable undertakings on its website.⁹⁰ According to the register six enforceable undertakings have been made by the EPA, all in the last two years (set out in Table H).

ENFORCEABLE UNDERTAKING: BOSKALIS AUSTRALIA

Boskalis Australia Pty Ltd discharged oil into Port Phillip Bay from the dredging vessel the *Queen* in contravention of s 39(1) and s 27A(1)(c). Boskalis agreed to fund training for its staff on ships to prevent further spills, fund a course at Swinburne University on dredging and its environmental impacts, sponsor a PhD project on dredging and its impacts, and to pay for monitoring and audit of its compliance with the undertaking.

The Krpan report states that the EPA only accepts an undertaking when it will achieve a more effective and long-term environmental outcome than prosecution.⁹¹ The Krpan report also notes the concern within EPA that negotiations for enforceable undertakings take too long and involve more costs and negotiation than prosecutions⁹², presumably a key reason why they have been used infrequently. The report recommends the continuation of their use, provided they are not used in circumstances such as serious breaches of the Act involving recklessness, multiple serious breaches or significant incidents that should be heard in court.⁹³

TABLE H: ENFORCEABLE UNDERTAKINGS

COMPANY NAME	DATE OF UNDERTAKING
South East Water Limited	11 June 2010
Boskalis Australia Pty Ltd	22 July 2010
PZ Cussons Pty Ltd	10 February 2011
Cargill Processing Ltd	21 April 2011
Western Region Water Corporation	25 April 2011
Powercor Australia Ltd	25 April 2011

Source: EPA website

⁸⁷ *Environment Protection Act 1970* s 67D.

⁸⁸ EPA website accessed at <http://www.epa.vic.gov.au/projects/enforceable-undertakings.asp> 13 December 2010.

⁸⁹ EPA Enforceable Undertakings: Guidelines, Government Gazette G20 14 May 2009 1202 accessed at <http://www.gazette.vic.gov.au/gazette/Gazettes2009/GG2009G020.pdf#page=32> 13 December 2010.

⁹⁰ EPA website: <https://www.epa.vic.gov.au/compliance-enforcement/enforceable-undertakings/enforceable-undertakings.asp> 13 December 2010.

⁹¹ Krpan, above n 3, 197.

⁹² Krpan, above n 3, 198.

⁹³ Krpan, above n 3, 198.

8. EPA'S ACCOUNTABILITY

8.1 Annual reporting

Reporting upon its operations, decisions made or not made, and policies are basic requirements of any regulator. VCEC's good regulatory design principles (Appendix B) highlight this, as do the EP Act environment protection principles. The two core relevant principles relate to transparency and accountability.

As noted throughout this report, data on the EPA's operations is very difficult, if not impossible to find. This year more data was available due to the Krpan report but this will not continue in future years unless the EPA improves its reporting. To date the EPA has done inadequate reporting of its operations (although they are not alone in this regard – all Victorian environmental regulators we have reviewed are seriously lacking in the reporting of their operations). To achieve its desired status as a modern environmental regulator that the community and regulated businesses can trust, the EPA must be much more open and transparent in its operations.

Appendix C contains a list of the regulatory tools, levers and powers that the EDO considers the EPA should report publicly on an annual basis. Both the June 2010 Auditor-General's report and the EPA's 2006 Enforcement Policy 'decision-making tree' have guided the EDO in articulating what the EPA should report. This should commence for the 2011–12 year and where applicable be divided by name and metropolitan or non-metropolitan regions across Victoria.

8.2 Public registers

Given the environmental principle of accountability enshrined in the EP Act, and the need for best practice regulators to be coherent and transparent about their decisions, the importance of making public registers highly accessible, up-to-date and user-friendly cannot be underestimated. Effective regulation is not only easily understood and respected by the regulated industry but can also draw on community and public intelligence about possible non-compliance. Public registers are an important part of facilitating greater community participation in environment protection.

The EPA has recently begun to make licences publicly available on their website. However it does not yet have a truly accessible online public register with good search ability to enable the public to assist in the monitoring of environmental regulation. Such a register should include priority sites and environmental audit outcomes searchable by location, landowner name, local government area/postcode, and date range. A public register should also identify accredited licence/works approval holders, scheduled activity registration, priority sites, sites subject to environmental audit and the dates of those audits, sites with Energy Resource and Efficiency Plans (**EREPS**), sustainability covenant agreements, and NEIPs.

9. CONCLUSIONS AND RECOMMENDED NEXT STEPS

The EPA as a regulator has been judged as severely lacking in the Victorian Auditor-General's report on hazardous waste management.

The EDO's own analysis reinforces the view that the EPA has been a 'poor performing' regulator in the past across a range of areas beyond waste management. These areas include declining numbers of (a) infringements; (b) pollution abatement and clean up notices; and (c) prosecutions, plus an apparent lack of contentious decisions by the EPA being appealed to VCAT.

In addition the EPA has failed to properly account for its performance by reason of a lack of transparency in its annual reporting about its use (or non-use) of the host of compliance and enforcement tools at its disposal.

As noted above, the EPA has made significant steps to improve its operations as an environmental regulator in light of significant pollution events which it failed to prevent, the Auditor-General's report, the Ombudsman's report and the anger of the community. It is developing an implementation plan to prioritise the recommendations of the Krpan report to improve its compliance and enforcement operations, and is implementing other non-enforcement operational improvements it has identified itself. Full implementation of these improvements will take a number of years, but the EPA must continue to prioritise this transition so as not to lose the organisational momentum built up in recent months. Government support for the EPA's transition will also be crucial.

While many of the problems the EPA is facing can be improved through better and more careful operations, a modernising of the EP Act would also be valuable to ensure the EPA has the full range of tools it needs to be a modern environmental regulator. A review of the EP Act is warranted, to ensure that Victoria has best practice environmental regulation that will see Victoria through the current and emerging environmental challenges of the next decade.

A number of the recommendations made in this report would assist the EPA in becoming a better regulator. The EDO looks forward to reviewing and reporting on improved regulatory standards and achievements when reporting on the EPA's operations over the next decade.

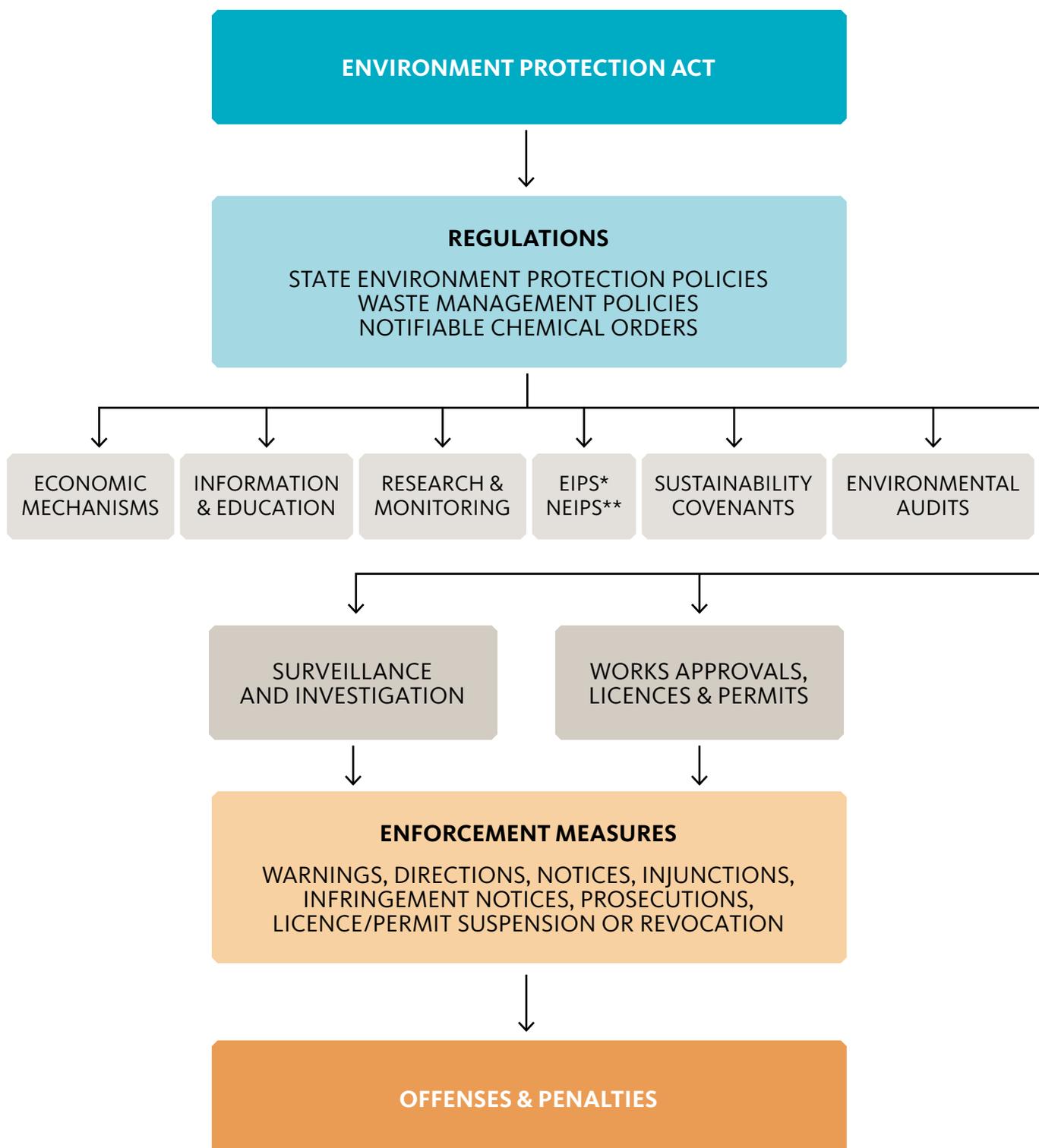
KEY RECOMMENDATIONS

The EDO recommends that the EPA:

- Produce easy-to-read consolidated versions of all SEPPs on their website;
- review and update all SEPPs and WMPs as part of the upcoming policy, prioritising those that are due for review;
- ensure all licences and works approvals are available to the public free of charge;
- continue to implement the recommendations of the Krpan report as a priority, in particular the increased focus on enforcement of environmental offences in the interest of the whole community;
- use its power wherever possible to prosecute directors and managers of companies who have committed serious offences;
- establish a comprehensive, searchable, online public register containing information regarding EPA's monitoring activities, including the information contained in Appendix C of this report;
- report on compliance and enforcement activity annually, including reporting on the information contained in Appendix C of this report;
- give greater consideration to the use of court penalties to support public environmental protection activities under s67AC of the EP Act;
- establish a review of the EP Act with a view to implementing best practice environment protection legislation for Victoria; and
- continue to prioritise the transition to becoming a modern environmental regulator.

The Victorian Government must continue to support the EPA in these efforts.

APPENDIX A: OVERVIEW OF EPA'S IMPLEMENTATION OF THE EP ACT



*EIPs = Environment Improvement Plans

**NEIPs = Neighbourhood Environment Improvement Plans

Source: EPA Victoria Enforcement Policy June 2006

APPENDIX B:

CHARACTERISTICS OF GOOD REGULATORY SYSTEMS

—VCEC VICTORIAN GUIDE TO REGULATION

- **Effectiveness.** Regulation, in combination with other government initiatives, must be focused on the problem and achieve its intended policy objectives with minimal side-effects. The regulatory system should also encourage innovation and complement the efficiency of markets.
- **Proportionality.** Regulatory measures should be proportional to the problem that they seek to address. This principle is particularly applicable in terms of any compliance burden or penalty framework which may apply. This characteristic also includes the effective targeting of regulation at those firms/individuals where the regulation will generate the highest net benefits.
- **Flexibility.** Government departments and agencies are encouraged to pursue a culture of continuous improvement, and regularly review legislative and regulatory restrictions. Where necessary, regulatory measures should be modified or eliminated to take account of changing social and business environments, and technological advances. All subordinate legislation must be reviewed regularly and systematically under the Subordinate Legislation Act 1994. The Act mandates that subordinate legislation ‘sunset’ after ten years. This should be considered as the maximum time period at which the legislation is reviewed. Best practice would require more frequent review periods (although overly frequent changes in the law can place burdens on the community).
- Flexibility should also be taken into account when drafting legislation, to ensure that it does not unnecessarily constrain future government responses. For example, if primary legislation requires prices to be specified in subordinate legislation, it makes it illegal to adopt other less prescriptive options (e.g. price monitoring), even if such less prescriptive approaches become more appropriate over time.
- **Transparency.** The development and enforcement of government regulation should be transparent to the community and the business sector. Transparency can promote learning and information-sharing within the regulatory system, and can also help to build public trust in the quality of regulation and the integrity of the process.
- **Consistent and predictable.** Regulation should be consistent with other policies, laws and agreements affecting regulated parties to avoid confusion. It should also be predictable in order to create a stable regulatory environment and foster business confidence. The regulatory approach should be applied consistently across regulated parties with like circumstances.
- **Cooperation.** When appropriate, regulation must be developed with the participation of the community and business and in coordination with other jurisdictions, both within Australia and internationally, to ensure that it reflects the interest of Victorians and takes into account Victoria’s major trading relationships. Regulators should also seek to build a cooperative compliance culture.
- **Accountability.** The Government must explain its decisions on regulation and be subject to public scrutiny. The same is true of its enforcement agencies. As such, the development and enforcement of regulation in Victoria should be monitored, with the results being reported to the public on a systematic basis.
- **Subject to appeal.** There should be transparent and robust mechanisms to appeal against decisions made by a regulatory body that may have significant impacts on individuals and/or businesses.

APPENDIX C:

INFORMATION THAT SHOULD BE PUBLISHED ANNUALLY BY THE EPA

1 State Environment Protection Policies (SEPPs)

- 1.1 Number of new SEPPs initiated
- 1.2 Variations to SEPPs
- 1.3 Review of SEPPs

2 Industrial/Waste Management Policies

- 2.1 Number of new WMPs initiated
- 2.2 Variations to WMPs
- 2.3 Review of WMPs

3 Notifiable Chemical Orders (NCOs)

- 3.1 Number of existing NCOs
- 3.2 Variations to NCOs

4 Economic Mechanisms to create incentives for environment protection

- 4.1 New mechanisms
- 4.2 Variations to existing incentives

5 Neighbourhood Environment Improvement Plans

- 5.1 Voluntary
- 5.2 Directed
- 5.3 Number entered into during reporting period
- 5.4 Total number current

6 Environment Plans

- 6.1 Total number currently entered into/ required during the year

7 Environment and Resource Efficiency Plans

- 7.1 Total number currently entered into/ required during the year

8 Sustainability Covenant Agreements

- 8.1 Entered into
- 8.2 Total number current

9 Any industries declared by the EPA to have a significant impact on the environment

- 9.1 If no industries have been declared, has the EPA utilised its power under s 49AO of the Act to audit an industry for ecological impact, product and services stewardship approaches; and/or identified any industries during the year where efficiency and reduced impacts could be made?

10 Ecological impact statement

- 10.1 Number required by the EPA during the year [s 49Ak]

11 Environmental audits

- 11.1 Number required by EPA during the year

12 EPA-initiated inspections

- 12.1 Number initiated across all regulatory functions (broken into industry categories and regulatory focus; for example, oil pollution, hazardous waste)

13 Priority sites

- 13.1 Number received
- 13.2 Number of newly registered during the year by location/region
- 13.3 Number current

14 Victorian Auditor-General's June 2010 Hazardous Waste Management report recommendations

- 14.1 Progress made in relation to their nine recommendations

15 Works Approvals

- 15.1 Number of inspections to test compliance in year as a percentage of the whole

16 Warnings and Directions

- 16.1 By industry sector/nature of potential offences

17 Notices

- 17.1 Pollution abatement notices
- 17.2 Clean up orders
- 17.3 Infringement notices by industry/
nature of environmental harm

NB: EPA should distinguish between number of notices issued by it as distinct from local government [litter] and Victoria Police [motor vehicles]

18 Accredited licence holders

- 18.1 Number issued during the year
- 18.2 Number revoked
- 18.3 Number suspended
- 18.4 Number with conditions imposed upon existing licensee/permit holder
- 18.5 Number of injunctions
- 18.6 Number of performance reports and annual statements due/actually submitted by licensees
- 18.7 Number inspected during term of accreditation contrasted with number inspected upon renewal

19 Licences/permits

- 19.1 Number of licences/permits issues during the year
- 19.2 Number revoked
- 19.3 Number suspended
- 19.4 Conditions imposed upon existing licensee/permit holder
- 19.5 Injunctions
- 19.6 Number of performance reports and annual statements due/actually submitted by licensees
- 19.7 Number inspected during term of accreditation contrasted with number inspected upon renewal

20 Enforcement Activity

- 20.1 Public (third party) complaints of possible hazard waste disposal offences (for example, breach of licence and number received by area)
- 20.2 Prosecutions and outcomes against corporation and individuals
- 20.3 Total number of court orders directed to community/public environment benefit projects; amounts involved in such; and case studies being publicised.
- 20.4 Appeals against EPA or EP Act decisions by category of decisions and number in each category. For example, licence or permit refused, licence accreditation revoked, works approvals, third party reviews.
- 20.5 EP Act offences and penalties, by offence type and penalty. For example, see table on following page.

EXAMPLE TABLE: DATA THE EPA SHOULD PUBLISH ON EP ACT OFFENCES AND PENALTIES

OFFENCE TYPE		NUMBER OF INFRINGEMENT NOTICES	NUMBER OF CHARGES INITIATED	NUMBER RESULTING IN FINDINGS OF GUILT OR CONVICTIONS	NUMBER OF ORDERS RESULTING IN COMMUNITY ENVIRONMENT INITIATIVES BEING FUNDED
LEVEL 1	Aggravated pollution			Individual Corporation	
	False environmental audit/ monitoring results				
	False information by environmental auditor				
LEVEL 2A	Intentional pollution				
	Intentional environmental hazard				
	Intentional false information				
	Illegal dumping				
LEVEL 2B	Water, air, land, noise pollution				
	Environmental hazard				
	Unlicensed activity/ breach of licence				
	Breach of works approval				
	Breach of notices				
	Unpermitted activity/ breach of permit				
	False information				
	Others				
LEVEL 3	Total No. of Infringements against: industry waste transport providers motor vehicles				
LEVEL 4	Litter infringements				

