



RESPONSE TO COMMENTS

ENVIRONMENT PROTECTION (ENVIRONMENT AND RESOURCE EFFICIENCY PLANS) REGULATIONS 2007 AND REGULATORY IMPACT STATEMENT

Publication 1195 December 2007

INTRODUCTION

The *Environment Protection Act 1970* creates a framework for large commercial and industrial resource users to develop and implement an Environment and Resource Efficiency Plan (EREP).

The *Environment Protection (Environment and Resource Efficiency Plans) Regulations 2007* (the Regulations) prescribe environmental resources and consumption thresholds that trigger participation in the program. The Regulations also prescribe criteria for the preparation of an EREP, registration and reporting requirements, and criteria for exemptions.

Large commercial and industrial energy and water users that trigger one or more thresholds in 2006/07 will be required to register with EPA from January to March 2008, and submit an EREP by December 2008. Some smaller users may seek an extension of time. EREP assessment will involve an integrated approach to energy and water use and waste generation at each participating premises. An EREP will include a list of resource efficiency actions available at the premises, and all actions with a three-year or better simple financial payback must be implemented. Participants will report to EPA annually. Large users that trigger one or more thresholds in subsequent financial years will also be subject to EREP requirements.

SUMMARY OF TERMS

Term	Definition
CO ₂ -e	Carbon dioxide equivalents
DIIRD	Victorian Department of Innovation, Industry and Regional Development
EEO	Commonwealth Department of Industry, Tourism and Resources Energy Efficiency Opportunities program
EP Act	<i>Environment Protection Act 1970</i> (Vic)
EPA	Environment Protection Authority Victoria
EREP	Environment and Resource Efficiency Plan(s) program
ETS	Emissions trading scheme (as proposed by the Commonwealth)
GHG	Greenhouse gas
Guidelines	Environment and Resource Efficiency Plans Guidelines
IGP	EPA Victoria's Industry Greenhouse Program
KPI	Key performance indicator
MRET	Commonwealth Mandatory Renewable Energy Target
NGER	<i>National Greenhouse and Reporting Act 2007</i> (Cwlth)
NPI	National Pollutant Inventory database
NPV	Net present value
NSW DEUS	New South Wales Department of Energy, Utilities and Sustainability Water and Energy Savings Action Plans program
OSCAR	Australian Greenhouse Office Online System for Comprehensive Activity Reporting
Plan	Environment and Resource Efficiency Plan
Regulations	<i>Environment Protection (Environment and Resource Efficiency Plans) Regulations 2007</i>
RIS	Regulatory impact statement
SV	Sustainability Victoria
VCEC	Victorian Competition and Efficiency Commission
VRET	Victorian Mandatory Renewable Energy Target scheme
Waste Wise	Sustainability Victoria's Waste Wise program
waterMAP	Victorian Department of Sustainability and Environment water Management Action Plans program

DEVELOPMENT OF THE REGULATIONS

EPA consulted extensively on the development of the Regulations and program design throughout 2007. A RIS was prepared in accordance with the requirements of the *Subordinate Legislation Act 1994* and the Guidelines issued under that Act. The RIS concludes that the benefits of making the Regulations outweigh the associated costs. The VCEC assessed the RIS prior to its release and assessed the RIS as adequate and meeting the requirements of the *Victorian Guide to Regulation*.

EPA released the draft Regulations and RIS for a formal public comment period of 28 days. The formal public comment period ended on 19 October 2007.

SUBMISSIONS

EPA received 48 written submissions on the draft Regulations and RIS. Industry and industry associations were most heavily represented with some submissions from private citizens. Submissions are subject to EPA's submissions publication policy (www.epa.vic.gov.au/statements/submissions_policy.asp) and will be published on the EPA website, except where EPA received an express request to withhold a submission from publication. A full list is provided below.

1. Ecogen Energy Pty Ltd
2. Private Citizen 1
3. Mars Snackfood Australia Pty Ltd
4. Bendigo Mining Ltd
5. SITA Australia Pty Ltd
6. Energetics Pty Ltd
7. Melbourne Water Corporation
8. United Group Ltd
9. Private Citizen 2
10. Private Citizen 3
11. Unimin Australia Ltd
12. Environment Victoria
13. Private Citizen 4
14. Orica Australia Ltd
15. QAF Meat Industries Pty Ltd
16. Godfrey Hirst Pty Ltd
17. Private Citizen 5
18. Private Citizen 6
19. Private Citizen 7
20. Private Citizen 8
21. Private Citizen 9
22. Monash University
23. Private Citizen 10
24. Vitasoy Australia Products Pty Ltd
25. CBM Resources Pty Ltd
26. Private Citizen 11

27. Private Citizen 12
28. Qenos Pty Ltd
29. CSR Ltd
30. Australian Lot Feeders' Association
31. TRUenergy Yallourn Pty Ltd
32. Perseverance Corporation Ltd
33. Shell Refining (Australia) Pty Ltd
34. Pilkington (Australia) Ltd
35. Australian Vinyls Corporation Pty Ltd
36. ExxonMobil Corporation
37. BPL Melbourne Pty Ltd
38. Environment Defenders Office (Victoria) Ltd
39. Ernst & Young Australia
40. Australian Industry Group
41. Victorian Farmers Federation
42. Energy Users Association of Australia
43. City West Water Ltd
44. Property Council of Australia (Victorian Division)
45. Shopping Centre Council of Australia Ltd
46. Alcoa World Alumina Australia
47. Minerals Council of Australia Victorian Division
48. Private Citizen 13

Submissions were supportive of fostering resource efficiency amongst large commercial and industrial users. The main area of concern raised was how actions and reporting under other mandatory and voluntary programs would be treated under the EREP program.

RESPONSE TO COMMENTS

This Table sets out EPA's response to the comments received in public submissions about the draft Regulations and RIS. Some comments relate to the draft Regulations and Guidelines, but issues that are specific to the draft Guidelines have been taken into account in finalising the Guidelines.

Regulation	Comments	EPA response
<p>Scope</p> <p>[Schedule 1 Part 1 Regulation 6]</p>	<p>One submission recommended the Regulations include biodiesel blends to align with Australian Greenhouse Office categories.</p> <p>One submission noted that bagasse is specified as a fuel source in Schedule 1 of the Regulations. Bagasse is a renewable fuel produced from sugar cane, which is not grown in Victoria.</p> <p>One submission expressed concern about excluding stockpiled and embodied energy from the definition of 'energy' when these sources contribute to overall consumption in a significant way.</p> <p>One submission said it is unclear how recycled fuel products are treated. Is it intended that opportunities to reduce the use of such recycled products be also examined?</p> <p>Three submissions recommended that energy from renewable sources should not be included in the definition of energy in Schedule 1 of the Regulations.</p> <p>One submission asked if EPA will require reporting consumption of different types of fuel.</p> <p>One submission commented that the range of energy and energy sources in Schedule 1 of the Regulations was well defined.</p>	<p>For consistency between Regulations and to assist industries that participate in both State and Federal Government programs, the list of energy sources in Schedule 1 is the same as the list in the Australian Government's <i>Energy Efficiency Opportunities Regulations 2006</i>.</p> <p>In regard to the use of biodiesel blends, biodiesel and petroleum fuel blends are both specifically listed in Schedule 1.</p> <p>If bagasse is imported into Victoria for use as a fuel it should be included as an energy source. Bagasse will therefore be retained in the list of energy sources in Schedule 1.</p> <p>EPA acknowledges that embodied energy is a significant impact for certain sites. The assessment of embodied energy is an emerging field and there is unlikely to be adequate data to require participants to include embodied energy in their Plan. Stockpiling of energy sources is not considered 'use' under the Regulations.</p> <p>EREP seeks to improve the efficiency with which all resources are used, including both renewable energy sources and energy sources from recycled products.</p> <p>Recycled oil products are included in Schedule 1 under petroleum products.</p> <p>All energy and energy sources are included for the purposes of determining resource use to trigger participation in the EREP program. The extent to which a participant uses energy from renewable sources needs to be included in their Plan and will be taken into account by EPA.</p> <p>Yes. Schedule 1 of the Regulations contains an exhaustive list of all energy and energy sources that must be included for the purposes of triggering entry into the program and subsequently reported on an annual basis.</p>
	<p>Discussions with stakeholders raised the issue of whether energy used in transport would be captured under the Regulations.</p>	<p>All energy used <i>on site</i> needs to be included in the energy threshold calculation. This includes fuel used in transport on site (such as petrol and diesel). Energy used in transporting goods to and from the site is not included.</p>

Regulation	Comments	EPA response
<p>Definitions: General [Reg 4]</p>	<p>One submission recommended the definition of 'premises' should be as per the EP Act.</p> <p>Two submissions asked if the thresholds applied to corporate entities or to sites. Another submission said it would have been good if the Regulations could capture multiple sites so that collectively they exceed the threshold.</p> <p>Two submissions recommended that resource use by a contractor should not be included in an occupier's EREP.</p> <p>One submission said that EREP does not support actions designed to reduce impacts on other areas of the environment and providing greater opportunities for the local community, like installing and using water recycling infrastructure.</p>	<p>The definition of 'premises' in section 4 of the EP Act applies to the Regulations.</p> <p>Although EREP is premises-based and is not linked to a corporate boundary, corporate entities controlling multiple sites subject to EREP may choose to prepare a single Plan for these sites. Such Plans will need to include site-specific resource consumption and actions. The EP Act does not allow EPA to apply the threshold to multiple sites as described.</p> <p>Contractors perform work on behalf of an occupier, at the occupier's premises. For the purposes of EREP, the occupier has sufficient control over their actions and hence a contractor is not treated differently from any other employee working on site.</p> <p>The threshold for water (discussed below) does not include recycled water. These types of initiatives will therefore be recognised in the program design in that they are not caught in the initial threshold. Any resulting efficiencies will be recognised in the Plan.</p>
<p>Definitions: Water</p> <p>Regulation 4 (for Plans) Regulation 5 (for threshold calculations)</p>	<p>There were multiple submissions about the water definitions in the EREP Regulations:</p> <ul style="list-style-type: none"> • One submission asked why rainwater and stormwater are included in the definition of water when this water would normally be lost as waste if it was not harvested. • One submission recommended that the definition of water in the context of the Regulations should be clarified. The definition of water in Part 1, Regulation 4 is confusing and inconsistent with the scope of the regulations outlined in Part 2, Regulation 5(4) and the requirements of the Guidelines. • One submission asked whether 'seawater' includes desalinated seawater. • One submission commented that all groundwater needs to be accounted for due to interconnectivity and because it is also a poorly mapped and understood resource. 	<p>There are two definitions of water in the Regulations.</p> <p>Regulation 5(4) defines the water resources that must be assessed at a site to determine whether their water use has exceeded the threshold (more than 120ML in a trigger year).</p> <p>To determine whether a site triggers this threshold, businesses need to include all water used on site that is provided by a legal agreement, except for recycled water and water supplied as part of an environmental allocation.</p> <p>If the threshold is exceeded, a Plan identifying actions to reduce resource use must then include all water sources including recycled water and rainwater. Regulation 4 defines the water resources that must be considered in developing a Plan. This is broader than the definition in Regulation 5(4).</p> <p>This approach ensures that an assessment of water used at the site identifies opportunities to maximise the efficiency of all water sources. For clarity, EPA has added a note under the definition in Regulation 4 that refers to the definition of water in Regulation 5(4).</p> <p>The definition in Regulation 4 excludes seawater but includes desalinated water from all sources.</p> <p>Groundwater is covered by both definitions of water in the Regulations and therefore is taken into account in the EREP program.</p>

Regulation	Comments	EPA response
	<ul style="list-style-type: none"> <li data-bbox="316 315 839 517">• One submission recommended that mine dewatering operations and any subsequent reuse of the water should not be included for the purposes of triggering the threshold because these activities are not detrimental to urban or regional water supplies. A similar submission was made in relation to the coal seam dewatering as part of exploration and production of coal bed methane. <li data-bbox="316 696 839 837">• One submission suggested that there should be limits, in some circumstances, on the collection and use of rainwater and stormwater, as this water is effectively being taken away from the default environmental allocation. <li data-bbox="316 875 839 987">• One submission argued that the threshold for water should not include any water that is used in finished product manufacture with the intent of onselling (e.g., soy milk). <li data-bbox="316 1137 839 1196">• Two submissions raised concerns about metering surface, recycled and harvested stormwater. <li data-bbox="316 1346 839 1458">• One submission commented that water recovered from sewage or trade waste should be included in the definition of water for the purposes of Plans. This gives a more complete picture. <li data-bbox="316 1496 839 1666">• One submission commented that the range of sources of water was well defined in the Regulations. Another submission supported the approach of excluding the use of renewable sources such as recycled water for the threshold. It also supported including recycled water in Plans. 	<p data-bbox="863 315 1420 658">Water that is not <i>used</i> on site is not included for the purposes of triggering the water threshold. Only groundwater used at a site is included in the definitions of water in the Regulations. Dewatering refers to water that is extracted during the mining process. EPA will not capture mining activities that involve extraction of water where the water is not subsequently used in site operations. Following consultation, and to ensure that EPA can administer the Regulations flexibly, EPA has included a discretion in the final Regulations (see Regulation 7(3)) for the Authority to exclude activities or sites on a case-by-case basis. EPA will discuss the application of the Regulations individually with affected sites.</p> <p data-bbox="863 696 1420 777">This Regulation focuses on increasing resource efficiency. It does not determine or affect water property rights, access to water or otherwise set consumption limits.</p> <p data-bbox="863 875 1420 1106">The EREP program is designed to capture all large energy and water users. EPA expects EREP participants to set efficiency indicators and identify that they are appropriate to their operations. EPA will not require businesses to implement actions that compromise core business objectives, including market growth opportunities. It is up to sites to demonstrate whether or not there are viable efficiency actions available for water in product.</p> <p data-bbox="863 1137 1420 1308">Sites do not need to measure use of recycled and harvested stormwater to determine if the site triggers the water use threshold. EPA acknowledges that many sites will not be metering some of these water sources. Sites should discuss the use of reasonable estimates with EPA during the development of their Plan.</p> <p data-bbox="863 1346 1420 1458">Water recovered from sewage or trade waste would be captured as 'recycled water' in the definition in Regulation 4. This water will be considered in Plans, but is not included in the calculation of whether a site has met the water use threshold.</p>

Regulation	Comments	EPA response
<p>Primary production exclusion</p> <p>[Reg 5]</p>	<p>One submission opposed the different treatment for intensive agriculture and primary production in the Regulations. Intensive farms are no less resource-efficient than extensive operations and are likely to be at the top end of an efficiency scale when using a definition of value for unit of input used. All agriculture should be exempted from the Regulations.</p> <p>One submission argued that the beef cattle feedlot industry should be exempt from participating in the EREP. This industry has many peculiarities in the resources it uses that differentiate it from other businesses and other intensive animal industries.</p>	<p>Intensive agriculture operations are controlled environments where predictable gains from resource efficiency programs are achievable. They generally involve a large capital investment and use resources and generate waste in ways that are likely to yield opportunities for improvement with an appropriate business case. EPA therefore considers intensive agriculture to be similar to manufacturing, and it would be inequitable to exclude it from the Regulations.</p>
<p>Resource use thresholds</p> <p>[Reg 5]</p>	<p>Five submissions recommended that EPA use tonnes of CO₂-e as the primary measure by which energy consumption and efficiency is assessed.</p> <p>One of these also suggested using megawatt hours, as an alternative to CO₂-e, as per NSW DEUS program.</p> <p>Twelve submissions recommended that EREP should include a solid waste threshold. These submissions also recommended that the thresholds should be lower for a more ambitious roll out of the program.</p> <p>One submission asked if the thresholds would change in the future, in particular post-Kyoto in 2012.</p>	<p>The purpose of the EREP is to improve resource efficiency across energy and water use and waste generation, rather than to primarily reduce greenhouse emissions. However, there is clearly a high correlation between energy efficiency and reduced CO₂ emissions. This correlation was shown in the results of EPA's IGP program.</p> <p>Energy use in terajoules determines participation in the program but will not necessarily be the primary measure by which efficiency is assessed. Where there is a potentially perverse outcome between energy efficiency actions and GHG emissions, EPA will discuss this with affected participants.</p> <p>As part of the self-assessment to determine participation in the program, sites will be able to enter electricity use in megawatt-hours to be converted to terajoules.</p> <p>EPA recognises the importance of reducing waste and that is why <i>all</i> participants are required to assess waste in their Plans and implement actions for waste with a three-year or better payback. Waste is used in the Regulations as a proxy for materials consumption generally. There is insufficient site-specific data available about waste generation and it is not possible to set a threshold at this time. As data emerges from the EREP program it may be possible and appropriate to add a waste threshold.</p> <p>As detailed in the regulatory impact statement (RIS), EPA believes that the 100 TJ/120 ML thresholds are appropriate for the initial rollout of the program.</p> <p>It is possible that different thresholds may be applied in the future. This would require new Regulations to be made and would only be done after going through the RIS process and extensive public consultation.</p>
<p>Ceasing to conduct a scheduled activity</p> <p>[Regulation 5]</p>	<p>One submission asked what happens when a participant goes in and out of the thresholds.</p>	<p>A participant's resource use needs to stay below the relevant threshold for three consecutive years to fall outside the program. This is to ensure that small fluctuations in resource use don't cause sites to move in and out of the program from year to year.</p>

Regulation	Comments	EPA response
	<p>One submission suggested that EPA should allow immediate deregistration where a specific plant is decommissioned, an energy efficiency project is implemented or fuel switch made. A three-year wait is unnecessary in such circumstances.</p> <p>One submission asked what happens to an EREP when a business is sold or closes down. Does the EREP stay in place or is it invalid? If an organisation wants or needs to move, is there any extra time allowed?</p>	<p>EPA agrees that there should be capacity to revoke an EREP, but this will be limited to circumstances where the operations constituting the scheduled activity cease (such as decommissioning). The final Regulations include a revocation process that takes effect when the activity ceases.</p> <p>The EREP relates to the scheduled activity and the occupier responsible for it, rather than to the corporate entity. If a business is sold, the new owner becomes responsible for the EREP. If the scheduled activity ceases, the person responsible must notify the Authority and can apply to have the EREP revoked. If a business moves, depending on resource use at the new site, it may need to prepare a new EREP.</p>
<p>Site closure [Regulation 7]</p>	<p>Discussions indicated that for site closure or substantial activity change under Regulation 7(1)(b), 12 months after the end of a trigger year was not long enough.</p>	<p>EPA agrees and the final Regulations provide for a period of 24 months after the end of a trigger year.</p>
<p>Exemptions [Regulations 13, 14]</p>	<p>There were multiple submissions about exemptions under the EREP Regulations:</p> <ul style="list-style-type: none"> • Two submissions argued that ‘exemption’ is not a suitable term as it implies exemption from compliance. • Six submissions would like to see the exemption process simply recognise other programs (e.g., waterMAP) with no reworking. • Five submissions raised the general issue of how actions under existing or proposed programs might feed into EREP. • One submission recommended that EPA should let industries that have accredited management systems such as ISO14001 set targets that comply with EREP requirements. • Another submission suggested that EPA should exclude loads already covered by EEO and exclude sites that can demonstrate energy use is already at world’s best practice. • One submission considered that exemptions from the EREP scheme should only be permitted where the business is participating in a more stringent or at least equivalent scheme. • One submission supported the intent of the exemption provisions and believes they will assist in avoiding unnecessary duplication and costs of implementation. • One submission commented that the requirement to meet criteria as outlined in Appendix 6 of the Guidelines (including updating pre-existing actions under other programs to apply the three-year payback) reduces the intended effect of an exemption. 	<p>A participant who is granted an exemption from preparing a Plan is not exempt from the entire EREP program. They will still be required to register with EPA and report annually as long as they remain above the relevant threshold(s).</p> <p>EPA will recognise actions under other programs (or undertaken voluntarily) that are suitable for inclusion in a Plan. This could include plans that focus on a single resource but do not assess the impacts on other resources or waste generation.</p> <p>Exemptions from the requirement to prepare a Plan will be considered on a case-by-case basis and full or partial exemptions will be granted where a participant has an existing plan(s) that is equivalent in outcome to a Plan in whole or part. Further guidance on the criteria for exemptions and recognition of prior and current activities is set out in the final Guidelines.</p> <p>Exemptions from the requirement to prepare a Plan may be granted, but EPA requires updates and reports to track progress against the alternative plan(s).</p>

Regulation	Comments	EPA response
<p>Reporting</p> <p>[Regulation 16]</p>	<p>There were multiple submissions about reporting under the EREP Regulations:</p> <ul style="list-style-type: none"> • Sixteen submissions commented on streamlining compliance and reporting requirements with other reporting platforms (e.g., OSCAR, NPI). • Three submissions recommended that there should be greater consultation between all jurisdictions to ensure that reporting overlap between programs is minimised and information can be appropriately shared (e.g., WaterMAP, EEO, NGER and WasteWise). • Two submissions recommended that annual reporting include requirements to update actions and reflect new actions. • Another submission commented that it is essential to understand how the reporting or disclosure of information in EREP might be linked into NGER. How would an emissions trading scheme (ETS) affect EREP when it comes into effect? • One submission commented that participants should be able to give feedback and suggestions for improvement about the reporting process once they have been through it. • Two submissions expressed concern that the reporting process will result in unnecessary regulatory burden without producing a better environmental outcome. EREP requires supply of information already submitted to other Government bodies in a slightly different format, even when exemptions have been obtained. 	<p>EPA is developing reporting templates, and where possible, will ask for the same sorts of information in the same form (for example, the Australian Greenhouse Office's OSCAR tool) as other programs. EPA will continue to work with state and federal counterparts to achieve harmonisation where possible, including about the nature and scope of NGER reporting obligations. EPA is also contributing to a working group on OSCAR.</p> <p>Sharing of commercial information between government agencies would require up-front consent from affected businesses and may be prohibited under agency-specific legislation. EPA will therefore initially focus on providing flexibility in reporting format and timing.</p> <p>Participants may choose to incorporate new actions that are identified during the life of a Plan.</p> <p>There is no formal link between EREP and NGER. However, some of the information needs will overlap. An ETS would not have a direct impact on a participant's Plan, although implementing EREP actions that reduce GHG emissions may better position participants in the lead-up to, and after the commencement of, an ETS.</p> <p>EPA welcomes any ongoing feedback about the program, including reporting.</p> <p>The key purpose of reporting to EPA is to confirm progress against specific actions that are agreed between EPA and the site, and to review action implementation. Reporting will therefore be tailored to the EREP program.</p>
<p>Showcasing benefits</p>	<p>One submission suggested that the benefits of EREP should be shown as case studies, best practice etc, so that everyone can share in advancements. There is no point in having EREP if there is no communication strategy developed which feeds information back to industry.</p>	<p>EPA agrees that this is important and will seek to publish appropriate case studies with the permission of participants.</p>
<p>Substitution</p> <p>[Reg 17]</p>	<p>One submission asked if the requirement to update pricing and paybacks constitutes a change to an approved EREP, which would activate Regulation 17. Would this apply to other potentially minor (but likely) changes, such as changing resources/personnel at a site?</p>	<p>EPA has removed this requirement from the Regulations. Changes to an approved EREP will be dealt with under Regulation 17 and minor variations will be processed in a timely manner.</p>

Regulation	Comments	EPA response
<p>Plan criteria [Schedule 2]</p>	<p>Two submissions commented that criteria to be included in an EREP in schedule 2 of the Regulations were clear and easy to read.</p> <p>One submission commented that the criteria for preparing an EREP seem appropriate for the outcomes to be achieved. Some of the information produced to comply will be commercially sensitive (process flow diagrams etc). EPA needs to ensure that this level of information is not made publicly available through any Freedom of Information Act provisions.</p> <p>One submission commented that the requirement to submit resource flow diagrams is unwieldy for a complex and varied organisation offering a large range of services like a University.</p> <p>One submission suggested that there should be a template developed to make the Plan easy to put together.</p>	<p>EPA will identify the sites participating in the EREP program in a public register of scheduled activities. EPA will not disclose potentially commercially sensitive information without a participant's permission, unless legally obliged to do so. EPA will not publish specific Plans or annual reports, but we may publish aggregated information on the program.</p> <p>Section 60 of the EP Act makes it a criminal offence for EPA staff to disclose any commercially sensitive information they obtain in the course of their duties, unless the disclosure is for the purposes of the Act.</p> <p>Information provided to EPA will be subject to the <i>Freedom of Information Act 1982</i>. Documents relating to trade secrets, or other matters of a business, commercial or financial nature are exempt from public access under this Act.</p> <p>The material listed in Schedule 2 of the Regulations is required to demonstrate that the information and actions included in a Plan are appropriate. EPA will provide some flexibility in how to present this material and participants should discuss this with EPA during the development of the Plan for their site.</p> <p>EPA agrees and is developing an online template for this purpose.</p>
<p>Baseline data</p>	<p>One submission commented that, in manufacturing, production can vary considerably from year to year, depending on the demand for the product, with the result that data can fluctuate considerably. Baseline data may not therefore accurately reflect factory operations.</p> <p>Another submission suggested including a requirement for organisations to state any assumptions or estimates made in reporting baseline data.</p>	<p>The Regulations allow exemptions on the basis of abnormally high resource use in a trigger year. There is also a requirement that the information in the submitted Plan is correct and in accordance with the requirements of the EP Act and the Regulations. Therefore, any baseline data provided to EPA should include details of any underlying assumptions or any qualifications.</p>
<p>Efficiency indicators</p>	<p>One submission recommended that industry benchmarks and best practice should be described in guidance.</p> <p>One submission stated that it is important that the EREP program focuses KPIs on per unit of production.</p>	<p>EPA will not formally assess performance of a Plan against industry standards, and the Regulations acknowledge that such standards do not currently exist across all of the industries that are regulated. EPA will include in the supporting material details of recognised industry standards and guidance.</p> <p>To gain an understanding of the relative efficiency of the site and to track improvements, Plans need to include efficiency indicators associated with resource use and waste generation. Participants should choose indicators that are most relevant to their operations. The Guidelines will include examples of how they could be applied on a per-unit production basis.</p>

Regulation	Comments	EPA response
Action identification	<p>Five submissions raised concerns about integration across energy, water and waste.</p> <p>One submission recommended that the Regulations or Guidelines include provision for 'project investigations' in the list of actions, along with a provision to deliver the project on the condition that the investigation reveals a three-year or shorter payback.</p> <p>Two submissions commented that having to define the month and year each action will be implemented is over-planning and may trigger requirement to enter into new Plan.</p>	<p>The EREP program requires an integrated approach to managing the use of energy, water and waste at a site. This means that assessment of actions identified in a Plan must include the impacts on water, energy use and waste generation. Rather than examining energy, water and waste in isolation, an integrated approach maximises the likelihood of finding benefits across all resources, because it provides more complete information on which to base decisions. It also makes potential conflicts between resource use more transparent, which does not always occur if a plan focuses on a single resource.</p> <p>In addition to those actions with a three-year or better payback that are required to be implemented, participants should include potential opportunities that require further investigation.</p> <p>EPA requires sites to include the month and year of actions to track progress against Plans. Minor timing changes can be negotiated with EPA during the life of a Plan and will not require a new Plan under Regulation 17.</p>
Offsets [Schedule 2]	<p>Three submissions raised issues about the availability and enforceability of offsets, including whether EPA would approve actions at sites outside of Victoria.</p> <p>One submission commented that close scrutiny of proposed offsets would be required to ensure that such activities do not undermine the objectives of the scheme. Care needs to be taken, for example, to ensure that businesses do not use improvements at another site that would have occurred anyway to avoid addressing inefficiencies at the principal site.</p>	<p>Schedule 2 item (2)(a) of the Regulations permits environmental offsets by allowing sites to include actions in their Plan that could be undertaken at an alternative premises with the Authority's approval. An action based on an offset at another site not participating in the EREP program may be included in an implementation schedule ahead of other actions if it meets EPA's criteria for offsets as set out in the Guidelines.</p> <p>EPA will not approve offsets proposed at sites outside of Victoria for inclusion in EREP.</p> <p>EPA acknowledges comments about the appropriate use of offsets and intends to publish a discussion paper on environmental offset approaches in the next few months.</p>
Payback period [Schedule 2]	<p>There were multiple submissions about paybacks under the EREP Regulations:</p> <ul style="list-style-type: none"> • Twelve submissions raised concerns about EPA imposing a mandatory three-year simple financial payback, rather than allowing businesses to use their own criteria. • Twelve submissions recommended a five-year payback benchmark. • One submission recommended that implementation schedules need to take into account existing capital works and maintenance programs, especially when considering the three-year payback rule. 	<p>The EREP Regulations mandate resource efficiency assessments and the implementation of actions that meet the payback criteria.</p> <p>To ensure that the Regulations apply transparently and equitably across regulated sites, it is necessary to have a simple decision-making metric. Simple payback calculations are well understood by business and are often used to assess efficiency actions. The Regulations have adopted the same formula for calculating payback periods as the EEO program. EPA will provide further guidance about the costs and benefits that it expects to be included in payback calculations.</p>

Regulation	Comments	EPA response
	<ul style="list-style-type: none"> One submission commented that such a blanket criterion will mean a massive bias towards energy projects. The relatively low cost of water means very few water projects will be undertaken. Four submissions expressed concern about application of a mandatory three-year payback where other business priorities are impacted. Another submission asked if there is any scope for alignment of the EEO four-year payback and the EREP three-year payback under EREP. 	<p>Participants are required to implement those actions that have a three-year or better payback period. Where there are known price increases for resources during the life of a Plan (such as water price increases), this should be reflected in the payback assessments.</p> <p>EPA may allow sites not to implement actions with a three-year or better payback if these actions would:</p> <ul style="list-style-type: none"> have undesirable impacts such as negative health and safety outcomes or lead to greater environmental impacts over the life cycle of the product or service being produced preclude a future opportunity to deliver bigger gains in resource use efficiency <p>or</p> <ul style="list-style-type: none"> have other negative business impact(s). <p>Participants should discuss any circumstances that would prevent implementation of actions with EPA at the earliest opportunity.</p> <p>EPA believes the three-year payback period is appropriate considering the results of IGP, which showed average paybacks for energy actions of about 20 months. While EEO adopts a longer, four-year payback period, it does not mandate implementation. Voluntary adoption of a payback period longer than three years is encouraged in the EREP program.</p>
<p>Responsibility and sign-off</p> <p>Schedule 2</p>	<p>One submission said that it is not appropriate for an individual employee to have any direct responsibilities to EPA. Schedule 2 (2)(f) should be amended to refer to a position.</p> <p>Two submissions sought clarification of the level of accountability expected for signing off EREP documentation.</p>	<p>The intent of this requirement is to identify a person at the site as a primary contact for EPA. To avoid doubt, the final Regulations have been changed to refer to the position held.</p> <p>The CEO (or equivalent) or delegate of the site is required to sign off on registration, the Plan and annual reports. This will be set out in the Guidelines.</p>
<p>Public information</p> <p>[Section 26G of the EP Act]</p>	<p>One submission was opposed to any information that identifies the location of sites being made available on a public register.</p> <p>One submission commented that for industries that have binding commercial and legal requirements, for example with the State Government of Victoria, reporting commercially confidential information such as actual usage data, like electricity cost or savings, could contravene such agreements.</p> <p>Twelve submissions said that the performance of EREP participants should be made publicly available on the EPA website.</p>	<p>A register of sites participating in the EREP program will be published on the EPA website. This is an obligation in the EP Act. In order to identify participants, it may be necessary to also publish the suburb the site is located in (or nearest regional centre).</p> <p>EPA will not publish commercially sensitive information, which is likely to include resource use and waste data, Plans and annual reports. With participants' permission EPA will publish case studies and aggregated reports about compliance and performance under the program.</p>

Regulation	Comments	EPA response
	<p>Another submission commented that the register of participants should be accessible on the internet or through another suitable mechanism and consideration should be given to Plans being available to the public, subject to exclusion of commercially sensitive material. At the very least, annual performance reports should be publicly available.</p>	
<p>Consultation</p>	<p>Two submissions expressed disappointment that the Victorian minerals industry was not consulted until the late stages of the development of the Regulations.</p> <p>Another submission asked what consultation there has been with those who will be most affected by this program.</p> <p>One submission expressed disappointment about the limited timeframe for stakeholder comment. It is not apparent that EPA has consulted directly with those operating under existing energy efficiency regulations and who are required to implement capital projects to meet these obligations.</p> <p>Another submission commented that it appears that consultation has been restricted to industry stakeholders.</p> <p>One submission acknowledged the constructive dialogue between EPA and an industry association's working group about EREP.</p>	<p>EPA has consulted extensively about the development of the EREP program through 2007. This has included:</p> <ul style="list-style-type: none"> • more than 35 meetings with industry associations, water authorities and environmental representatives • meetings with likely EREP participants in Wangaratta, Shepparton, Bendigo, Ballarat and Traralgon • interviews with five sites for the Standard Cost Model assessment of administrative burden • Publication of two newsletters – with circulation of at least 7500 • briefings with interested government departments. <p>Throughout 2007, EPA wrote to more than 300 sites that are likely to participate in the program and EPA staff made personal contact with these sites.</p> <p>EPA consulted actively during the consultation period, which included holding seven public information sessions across the State, which were attended by nearly 200 people.</p> <p>EPA developed an online tool for stakeholders to submit structured feedback on the Regulations. Since September 2007 there have been 5800 hits on the EREP pages of the EPA website.</p>
<p>RIS</p>	<p>One submission made multiple comments about the RIS:</p> <ul style="list-style-type: none"> • Did not believe that the suggested approach would deliver a cost-effective return. • Commented that many of the projects listed under IGP would have proceeded anyway. The RIS ignores that many large users – in particular the proposed target audience of this program – continually strive for energy efficiency. • Believed the benefits of IGP in the RIS are as claimed by EPA and not externally audited. A better test of IGP success would be to compare Victoria's efficiency levels to equivalents in other jurisdictions. Can any evidence be found that IGP has given additional efficiency benefit to Victoria? Case studies similar to those used by IGP are used to promote energy efficiency in other states where there is no regulatory intervention. 	<p>The experience of IGP formed part of the RIS analysis. The RIS points to a number of national and international studies which show that significant resource efficiency opportunities are not taken up voluntarily by businesses. The IGP results were independently verified and this found that reductions under IGP were additional to business-as-usual activities (refer to EPA publication 1165, <i>Delivering business benefits from energy efficiency: the achievements of EPA's Industry Greenhouse Program</i>).</p> <p>As mentioned earlier in this document (see section on 'Exemptions') EPA will recognise current and prior actions to improve resource efficiency by participants. This will reduce the overall administrative and compliance burden for those sites and enable EPA to assess the impact of actions carried out as part of the EREP program in addition to other actions. The NPV analysis in the RIS projected the marginal benefits of the EREP program.</p>

Regulation	Comments	EPA response
	<ul style="list-style-type: none"> • Questioned how much EREP will increase energy efficiency on top of business-as-usual improvements driven by cost pressures and other program drivers. • Believed that no analysis has been done on the marginal benefit of EREP nor has there been active consultation with large users on this front. Corporations already subject to EEO will derive little if any marginal gain from EREP. • Stated that the RIS doesn't include sensitivity analysis on electricity prices and varying energy forms. In the last six months new entrant energy prices have increased by at least 50 per cent. This factor alone will have the greatest impact on implementation of efficiency measures. On top of this businesses will be facing additional charges from renewable energy schemes (VRET and MRET) and emissions trading. • Asked what evidence is there to suggest that many firms do not routinely measure their resource consumption or waste generation. The National Emissions Reporting and EEO will make energy and CO₂ reporting mandatory anyway. <p>One submission commented that the RIS is inaccurate in respect of costs to business. The same submission seeks advice from EPA as to which of the regulations affecting the property industry will be subject to 'offsetting simplification' to reduce regulatory burden to be imposed on property by EREP.</p> <p>One submission commented that companies like manufacturers already face fierce commercial competitive pressures to improve performance in order to remain viable and sustainable. Companies believe that continuous improvement is an effective response to these commercial challenges. A regulatory approach to encourage competition is at risk of developing a complex regime with excessive activity in reporting that may be a distraction from implementation of environmental improvements.</p>	<p>The pricing of water and energy in the RIS took into account likely price increases for these resources over the life of the Regulations. Further increases in these prices will improve the paybacks of identified actions.</p> <p>EPA is aware of measures to mandate energy reporting for many Australian businesses and is working to ensure consistency where possible.</p> <p>Some of the submissions made to EPA about the EREP Regulations identified specific metering/measurement deficiencies at potentially affected sites.</p> <p>In relation to waste generation, page 27 of the RIS quotes the Federal Government's response to a Productivity Commission Inquiry into Waste Generation and Resource Efficiency in Australia. This included the statement that:</p> <p style="padding-left: 40px;"><i>Waste policy in Australia is hampered by a lack of nationally consistent, robust data on waste, including types and volumes of waste generation, recycling levels and the evaluation of environmental impacts and benefits.</i></p> <p>After registration, the key purpose of reporting to EPA is to confirm progress against specific actions that are agreed between EPA and the site, and to review action implementation. Reporting will therefore be tailored to the EREP program (see under 'Reporting' above for further comment).</p> <p>The industry costs in the RIS were based on actual interviews with five companies that will be captured by the Regulations. These were conducted in accordance with the Victorian Standard Cost Model Manual. There are no proposed offsetting regulations for the property sector.</p> <p>The purpose of the EREP program is to prioritise efficiency actions within business, not only to accelerate readiness for a resource-constrained future, but also to increase profits by reducing energy, water and materials costs and the associated risks of inefficient consumption. It is not intended to deliver outcomes that are bad for business.</p>

Regulation	Comments	EPA response
<p>Regulatory approach</p>	<p>Two submissions recommended that participants should not have to rely on external consultants to perform assessments.</p> <p>One submission asked if businesses themselves would have to arrange for an external auditor to verify compliance. How will EPA determine if this is needed?</p> <p>One submission stated that flexibility seems important in the early stages of an EREP and that the EREP process should be designed to fit all business cycles during the first few years of the program.</p> <p>Two submissions commented that EREP can recognise prior assessments and studies if less than two years old. For large, complex operations, detailed studies (e.g., energy) may take up to two years to complete. Envisage five years being more realistic for a complex operation.</p> <p>One submission acknowledged that EPA has indicated willingness to be flexible in understanding the circumstances of individual businesses in EREP, but this cannot be extended infinitely under a regulatory system. If the thresholds were reduced to include smaller resource consumers, it would be a challenge to service the number of businesses with the required flexibility as promised.</p> <p>One submission commented that, because EREP mandates implementation of actions and has an integrated focus, this reduces any opportunities for businesses subject to other regulatory requirements (such as EEO) to develop a modified 'one size fits all' approach to address their assessment and reporting obligations.</p> <p>One submission argued that Government-mandated energy efficiency programs are not necessary to ensure that large businesses undertake cost savings measures.</p> <p>One submission asked if there will be funding for EREP.</p> <p>Three submissions supported the regulatory EREP model and the concept of integration and business responsibility about resource use.</p> <p>Two submissions commented that, generally, it would not be possible to pass shopping centre owner's costs of EREP on to tenants, reducing the return on investment generated by the property and weakening its attractiveness as an investment.</p>	<p>While an EREP requires a thorough assessment of energy, water and waste reduction opportunities and should be prepared by a team with necessary qualifications and expertise, EPA does not prescribe the use of external consultants. Further, EPA recognises that some participants may have recently conducted energy, water or waste audits. Where these can be used in developing a Plan, this will reduce the participant's costs.</p> <p>Businesses will not pay for auditing of compliance. EPA may conduct third-party auditing to assess compliance.</p> <p>Flexibility will be achieved by allowing businesses to schedule actions in their Plans in accordance with their business cycles.</p> <p>EPA will amend the Guidelines to clarify that the two-year threshold is indicative only and that participants may be able to use older assessments and studies if they remain relevant to current operations at the site and established best practice.</p> <p>The initial thresholds have been deliberately set at a level that balances large resource consumption and capacity to manage the program. EPA has included sub-thresholds in the Regulations that can allow smaller users extra time to submit a Plan. This approach recognises that large resource users are generally further progressed in addressing resource efficiency and are better positioned to submit an EREP by the end of 2008 than smaller resource users.</p> <p>It is true that the EREP program differs from other programs that tend to focus only on one resource (e.g., the EEO program deals only with energy). While EREP will require reporting on energy, water and waste, the energy data required has been aligned with the requirements under EEO.</p> <p>See response under 'RIS' above about the case for mandatory efficiency programs.</p> <p>No funding will be provided to implement Plans developed under the EREP program.</p> <p>EPA is aware that there are some implementation issues affecting particular sectors, including the retail property sector. While these issues should not prevent participation in the program, EPA will work through these issues with industry representatives.</p>

Regulation	Comments	EPA response
	<p>Twelve submissions also recommended that EPA should recognise or support businesses that voluntarily apply EREP across their entire business and supply chains, or that apply a longer term payback benchmark.</p>	<p>EPA strongly supports voluntary resource efficiency actions outside the EREP program. EPA is developing a resource kit to support businesses through the EREP process and this will be available to other businesses. EPA will acknowledge voluntary participation when businesses want that to happen.</p>
<p>Timing</p>	<p>Two submissions sought clarification about time frames.</p> <p>One submission asked if an organisation has three sites registered and during the process a fourth site triggers participation, does that site/organisation get extra time?</p> <p>Six submissions expressed concern about the proposed time frames, particularly about the requirement to complete a Plan by December 2008 and the relationship to EEO timing. Conversely, one submission commented that, as most businesses are likely to already be involved in EEO and waterMAP, the proposed time frames seem acceptable.</p> <p>Seven submissions commented on the requirement to report on a financial year basis. These submissions supported allowing a participant to nominate its own reporting period.</p> <p>One of those submissions also recommended that the initial trigger year could also be amended to cover a calendar year.</p> <p>One submission suggested that the exemption application period should be increased to three months after the time of registration to allow for a proper submission to be produced.</p>	<p>A simple timing flowchart for the EREP program is attached in Appendix 1 of this publication.</p> <p>Each site must be registered following the financial year in which they exceed one or more thresholds, and prepare and submit an EREP within 12 months of the end of the trigger year for that site. The only exception is for those who trigger a resource use threshold in 2006–07, who will be required to register from Jan 2008 – March 2008.</p> <p>EPA acknowledges that many sites will be captured by waterMAP, which requires the submission of plans by December 2007, and EEO, which requires submission of an implementation schedule by December 2007 and first assessments by June 2008. The EREP program provides for actions identified as part of a site's waterMAP or EEO assessment to be recognised for inclusion in their EREP to be submitted by December 2008. Given this scope for inclusion of other work, EPA believes that the time frames are reasonable. EPA remains in discussion with EEO about the implications on Victorian sites for the timing of the two programs.</p> <p>EPA has amended the final Regulations in response to comments to allow for either financial year (1 July – 30 June) or any alternative 12-month period agreed between the participant and EPA. Reports must be submitted within three months of the end of the relevant reporting period.</p> <p>The trigger year must be the same for all participants to ensure equity.</p> <p>Extending the period for applications for exemptions would not allow adequate time for partial exemption holders to finalise any outstanding components and submit their completed EREP by the end of December 2008.</p>
<p>Overlap</p>	<p>Three submissions commented that the draft Regulations appear to significantly overlap with the EEO and NGER. It is unclear why separate State regulations are being made when federal regulations require essentially the same information.</p> <p>One submission suggested including a sunset or transitional provision in the Regulations with timing to coincide with the introduction of national emissions trading or the future development of a State or national water market scheme, or similar.</p>	<p>Although some of the information required will be similar, EREP involves mandatory implementation of actions integrated across energy, water and waste. This distinguishes it from other programs.</p> <p>The Regulations have been amended to sunset after seven years of operation. This will allow earlier re-evaluation of the need for the EREP program to address the existing market failures that lead to businesses often not identifying and pursuing environmental resource use efficiency opportunities. In seven years time, some significant shifts may have occurred in business and consumer awareness of these issues, and in resource pricing (including potentially through an ETS).</p>

Regulation	Comments	EPA response
Assessment	Four submissions asked about the proposed assessment procedure. Will it be released for public comment? It should be provided as soon as possible and as a complete implementation package for industry.	Early next year EPA will publish a resource efficiency toolkit, including an assessment procedure to assist sites in carrying out assessments to develop their plans. This procedure provides guidance only; it is not a statutory requirement that sites follow this procedure. EPA will trial parts of the toolkit with companies and will seek feedback on its use throughout 2008.
International programs	One submission asked what overseas experience there is to guide this type of program.	As a regulatory model, the integrated EREP program is the first of its kind nationally and internationally. Relevant international programs are discussed in the RIS (e.g., see box 4.1, page 32).
Program review	Three submissions commented on program review and were supportive of periodic, independent public reviews.	The Regulations have a seven-year lifetime but EPA will assess the impact of the program before the Regulations expire.

APPENDIX 1: INITIAL EREP TIMING

