

DRAFT DEVELOPMENT PLAN

REVIEW OF THE ENVIRONMENT PROTECTION (SCHEDULED PREMISES AND EXEMPTIONS) REGULATIONS 1996

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PURPOSE OF THIS DOCUMENT

EPA Victoria is intending to remake the *Environment Protection (Scheduled Premises and Exemptions) Regulations 1996* ('the Regulations') which will sunset (cease to operate) in July 2007. The purpose of this development plan is to explain the process that EPA will follow in reviewing the Regulations. This development plan is designed to help stakeholders contribute to the regulation making process.

In Victoria the process for developing regulations is set out in the *Subordinate Legislation Act 1994* and guidelines issued under that Act. The *Subordinate Legislation Act 1994* requires that a Regulatory Impact Statement (RIS) is prepared where a new (or remade) statutory rule is proposed. This RIS must also meet the requirements of the Victorian Competition and Efficiency Commission ('VCEC') and its published *Victorian Guide to Regulation* (February 2005).

The purpose of an RIS is to ensure a rigorous assessment of regulatory proposals and their alternatives, to better inform government policy decision-making and ensure transparency.

In 1996 EPA developed a *Protocol for development of regulations and the preparation of regulatory impact statements* (EPA publication 484) in consultation with industry, community and environment groups. The protocol supplements the requirements of the *Subordinate Legislation Act 1994* by outlining the key principles, additional key steps and consultation processes that EPA has undertaken to follow in preparing a regulation and the accompanying RIS. The protocol sets out a range of consultation and impact assessment techniques as well as criteria to guide decisions about which of these techniques should be used in any individual RIS.

Preparation of this development plan is one of the key steps specified in the protocol.

BACKGROUND TO THE REGULATIONS

The *Environment Protection Act 1970* ('the Act') provides the legislative framework for the protection of the Victorian environment. One of the mechanisms which supports this endeavour is the works approval and licensing system for industry. Under the Act, certain types of premises are defined as 'scheduled' on the grounds that those types of premises have the potential to cause significant

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impact to the environment through emissions or discharges.

Scheduled premises require a works approval before construction or modification of facilities or processes, and/or a licence, which prescribes operating conditions, discharge limits and monitoring and reporting requirements under the Act.

The Regulations prescribe (list) the types and scale of industrial or waste management activities which are deemed to make a premises a scheduled premises, and provide for exemptions from certain provisions of the Act. The Regulations further prescribe whether each class of scheduled premises is subject to the Environment Protection Act's tools of works approval and/or licensing.

The aim of this legislative framework is to provide a high level of assurance that activities undertaken at premises that could have a significant impact on the environment are managed such that their operations do not impact on environmental quality.

In August 2006 a proposal for a number of changes to the Act was approved. These include removal of schedules one to six, the creation of amalgamated licences for licensees holding more than one licence, and modification of annual reporting for licensees through the creation of Annual Performance Statements. These reforms will not change the role of the *Environment Protection (Scheduled Premises and Exemptions) Regulations 1996*, but allow simplification and streamlining of the way in which scheduled premises are managed in the future.

REVIEW OF THE REGULATIONS

The Regulations have been in place in Victoria for 20 years. During this time they have been reviewed on a large scale on one occasion. This current review, like the previous review, is required by the *Subordinate Legislation Act 1994*, which limits the life of any Regulation to a period of 10 years.

The Governor-in-Council made a Regulation extending the operation of the *Environment Protection (Scheduled Premises and Exemptions) Regulations 1996* on 24 May 2006. Notice of this decision was published in the Government Gazette on 26 May 2006. The extension was requested for additional time to enable a thorough review of the existing regulations and other related legislation. The Regulations are now due to sunset (cease to operate) in July 2007.

Over the last twelve months EPA has conducted research and preliminary consultation with both internal (EPA) and external (current scheduled premises) stakeholders. This preliminary research and consultation confirmed that a regulatory instrument is still necessary and has enabled substantial progress in determining the scope of the review and the reasons for change where required, as well as identifying other opportunities for regulatory efficiency gains. The RIS will analyse in detail the proposed options explored in the preliminary consultation.

In accordance with the requirements of the Subordinate Legislation Act and the Victorian Guide to Regulation, a thorough review of the need for the Regulations will be undertaken.

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OBJECTIVES OF THIS REVIEW

The formal review of the Regulations will focus on ensuring that any remade Regulations will meet four key objectives. Any proposed new Regulations will:

- ensure opportunities for innovative regulation are considered to reduce regulatory burden on business
- respond to current and emerging changes in industry and community expectations
- encourage the efficient and effective environmental regulation of industry in a manner which is cost effective and consistent with business objectives
- provide a transparent regulatory system for industry and the community.

PROPOSED IMPACT ASSESSMENT METHODOLOGY

The EPA will engage an independent consultant to research and prepare the RIS. This consultant will be engaged following a public tender process. The consultant will be required to prepare the RIS in accordance with the relevant legislation and the VCEC's *Victorian Guide to Regulation*.

The RIS will examine the potential impacts of the various regulatory proposals in terms of economic, social and environmental costs and benefits, including administration and compliance costs.

The cost–benefit analysis of the proposed preferred regulatory option will include an assessment of the costs and benefits to:

- industry
- EPA Victoria;
- community;
- State Government.

IDENTIFIED MANAGEMENT OPTIONS

The review will consider the need for such regulations, and whether alternate approaches (including non-regulatory options) can better deliver the objectives set out previously. In considering options, the following will be addressed:

- consideration of innovative regulatory models including non-regulatory options
- a comparison with approaches by other jurisdictions
- the industries that warrant inclusion in the regulations (or that may be subject to alternate approaches)

Options that will be considered as part of this review include the following.

DO NOTHING

This option would involve allowing the regulations to expire in July 2007 and no longer having such a Regulation. Without a Regulation, the works approval and licensing provisions in the *Environment Protection Act 1970* would cease to have any effect. In the absence of works approvals and licences, industry would need to ensure it

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complies with the Environment Protection Act, including the environmental objectives for the various segments of the environment set out in the Act and State environment protection policies.

The removal of works approval and licensing systems could be in part offset by the development and implementation of industry codes or guidelines that articulate environmental performance standards from Government policy for particular industry sectors. EPA would also be able to use the reactive enforcement mechanisms in the *Environment Protection Act 1970* such as pollution abatement notices, prosecutions and penalty infringement notices to address any actual or likely non-compliance with the Act.

Preliminary feedback indicates that the community expects EPA to have a regulatory role with those industries that have an impact on their local environment. In addition, some industry stakeholders believe it is a benefit to be regulated by EPA as they can demonstrate to the community they are operating in accordance with regulatory requirements and are doing their bit to protect the community and their environment.

No regulation in the future is not considered the preferred alternative, however it will be explored to confirm whether this model is appropriate.

ROLL OVER EXISTING REGULATIONS

This option would involve making no changes to the existing regulations and remaking them with the current content. Premises or sectors with pollution issues that are not scheduled premises would continue to be managed through a range of other approaches including the use of reactive

enforcement mechanisms in the *Environment Protection Act 1970* such as pollution abatement notices, prosecutions and penalty infringement notices.

Feedback obtained during the preliminary consultation indicated that there was a need for updating the existing Regulations to ensure that focus by EPA and industry was directed to those activities posing a significant risk to the environment and those for which the community is most concerned or affected by the environmental impacts. No change means the same industries carry the burden of environmental regulation and not necessarily those having the greatest impact. In addition it will not allow recognition of changes in technology or progress in environmental performance of certain sectors and provide the opportunity to reduce or remove regulatory intervention where it is no longer the most appropriate mechanism.

This is not the preferred option as there is no opportunity to review the need for regulatory intervention or the potential for using more innovative regulatory models. However, it will be examined during the review process.

REVIEW AND REMAKE THE REGULATIONS

This option would involve reviewing and remaking the entire content of the current Regulations to ensure that the regulatory system is maintained and focuses on managing those activities posing the greatest risk to the environment, and capturing only those activities where the benefits delivered by works approval and/or licensing are outweighed by those costs.

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It is anticipated that the review and consultation process will confirm that this is the preferred option. Without pre-empting the results of consultation and analysis, EPA Victoria's expectation is that, as a result of changes in Victoria's industry structure, changing practices in many industries and changing community expectations, the review process will lead to recommendations regarding both a different mix of activity types which should be scheduled premises, and in some cases a different mix of the application of works approval and/or licensing to classes of scheduled premises.

This Regulation review will include consideration of the potential for using more innovative regulatory or non-regulatory models for a particular sector to reduce the regulatory burden for particular activities where appropriate. For example, this may include selectively removing a class of activity from the Regulations where a successful industry code of practice is in place or can be developed.

The continuation of the regulatory framework ensures that industry continues to be accountable to the community by demonstrating how they are protecting their environment. This will build on the successful improvement of environmental performance by industry that has occurred over the last 20 years.

OTHER ALTERNATIVES TO REGULATIONS

The consultative process and research into approaches to managing the environmental impacts of industrial and waste management facilities will also endeavour to identify other alternatives to Regulations that could be effectively applied in

Victoria. Stakeholder input on viable alternatives that should be considered through this process is invited.

The four options listed above will be explored in the RIS to confirm the most appropriate action for the future.

PROPOSED CONSULTATION PROGRAM

The review of the Regulations is a public process. Some of the consultative requirements for making Regulations are imposed through legislation. Other requirements are undertaken by EPA in accordance with the protocol.

Phase One: Development and publication of a development plan

September 2006

The draft Development Plan will be distributed for comment to likely interested stakeholders including industry associations, broader community, environment groups and Government Departments. The Development Plan will be revised in light of any comments received, and finalised in June 2006. EPA will engage a consultant during this period to prepare the RIS.

Phase Two: Drafting of RIS and preparation of draft Regulation for public release

Development

September – December 2006

During this time EPA will work with stakeholders to acquire accurate information on the implications of the proposed regulatory options for inclusion in the

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RIS. This will take place during September – December 2006. This period will also be an opportunity for EPA to identify and communicate with interested stakeholders for involvement throughout the review process. During this stage the RIS consultant will be required to conduct a survey of current scheduled premises and other stakeholders to capture broader feedback regarding the current system and seek advice about possible improvements.

Release of RIS and draft Regulation for public comment

January – February 2007

The *Subordinate Legislation Act 1994* requires that proposed Regulations are released for public comment for a period of at least 28 days. Given the nature of the proposed Regulation, and the timing of likely public release in the lead-up to Christmas, EPA intends to provide an extended consultation period, which will occur between mid-December 2006 and February 2007. The draft proposed Regulation will be released in combination with the RIS on the EPA website, and will be emailed or posted to stakeholders who have provided relevant details. At this time, advertisements in the Government Gazette and popular newspapers in Victoria will be published alerting the general public to the release of the proposal. During the consultation period, a series of meetings will be organised with stakeholder groups around the State (such as industry associations, for example), in order to discuss the proposal, design feature and any concerns.

All stakeholders will be encouraged to provide written comment on the proposal within the public consultation period.

Phase Three: Finalisation of Regulation, preparation of Response to Comments document, making of Regulation

Finalisation

March – May 2007

Feedback received on the draft Regulation and RIS will be considered in the finalisation of the Regulations. Further discussions with key stakeholders will be held to discuss any significant changes to the proposed Regulations. EPA will prepare a document summarising the public comments received during the consultation period and how they have been addressed. This document will be forwarded to all stakeholders who provided comment during the consultation period.

The proposed Regulations and the Response to Comments document will be submitted to the Authority and to the Minister for recommendation to the Governor-in-Council in May 2007.

Release

June 2007

Once the Regulations are made, notification of the decision will be advertised in the Government Gazette, and by way of Government media release. The Regulations will be made available on the EPA website and the Victorian Government legislation website, and will be available for purchase at Information Victoria.

EPA will arrange public presentations on the new Regulations with stakeholders around the State.

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THE PROCESS FROM HERE

You are encouraged to provide comment on this Regulation development plan. Written comments will be received at the following addresses until Friday 6 October 2006.

Project Manager – Review of Scheduled Premises and Exemptions Regulations

Regional Services
EPA Victoria
GO Box 4395QQ
MELBOURNE VIC 3001

Or email:

scheduledpremisesreview@epa.vic.gov.au

EPA will consider all comments made in revising and finalising the development plan, and will forward a copy of the final development plan to all respondents who have provided contact details.