



Sharon Stevens
Approvals Review Project
Environment Protection Authority

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By email: approvals.review@epa.vic.gov.au

Dear Sharon,

Re EPA Approvals Review

Thank you for the invitation to comment on the Draft Approvals Review Report (**Draft Report**).

The Environment Defenders Office (**EDO**) is a non-government, not-for-profit environmental law centre practising public interest planning and environment law. 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. As you might be aware, the EDO has considerable experience in dealing with the EPA approvals system. We note that the present Draft Report is not intended to affect or influence legislative changes and it is primarily administrative in scope. In this context we contribute several comments below, suggesting changes and improvements to the present situation.

Fast-tracking and 'low risk' assessments

We note that the Draft Report contains the proposal to develop a form of tiered approvals process, primarily by including a form of fast-tracked approval procedure. Fast-track approvals are defined as

...those proposals that EPA identifies to have a low risk to the community and are:

- known technologies that have been previously used in successful approvals; or
- a low risk to the environment, based on our published selection criteria.¹

The requirement for standard form information features significantly in the proposed approach. Factors such as the unlikelihood of community concern, demonstrated engagement with affected communities, and known technologies are intended to guide the decision to select (low risk) fast-tracking as an approach. The EDO has cautiously accepted a role for risk-based approvals in earlier submissions made to the VCEC inquiry in environmental regulation,² although we submit that the criteria underpinning such approach must be robust, reviewed regularly and not weakened over time.

¹ EPA *Draft Report*, 28

² EDO *Submission in response to Victorian Competition and Efficiency Commission A Sustainable Future for Victoria: Getting Environmental Regulation Right – Overview and Recommendations* (2009), 17-18, http://www.edovic.org.au/downloads/files/law_reform/edo_vic_vcec2009_submission.pdf

In respect of the current approach outlined in the Draft Report, we urge the following:

1. The standard form request for information needs to include information about likely or possible environmental impacts that might be associated with the proposed project.
2. There needs to be greater clarity around the capacity for, and circumstances under which, the EPA requires further information and makes further inquiries, on top of the information supplied by the proponent in the standard form.
3. There needs to be greater guidance and structure around the community engagement required of proponents, and these requirements should be contained in regulations. This should include the need to make that engagement relevant to the communities in which the proponents are operating. That may include providing information in languages other than English, providing information in clear and explicable language (eg where technical issues are concerned), letter-box drops of easy-to-understand information, involving local community groups in early negotiations, discussions and informing-sharing, and providing reasonable and accessible channels for local community members to respond with concerns or enquiries both to the proponent and to the EPA, as well as external avenues of complaint (eg the Ombudsman).
4. Similar concerns to those raised at point 3 apply to any notices issued by the EPA to affected communities.
5. There should be a means of review of a decision to allocate a project to a particular assessment or risk pathway. At present, an approval itself can be challenged, subject to standing, on the merits. But the process of determining a 'low risk' or 'fast track' approval does not appear to include any review process. Given this is an internal administrative change that is being considered, it is appropriate that there is at least the capacity for internal review of such a decision. The only alternative means of challenge (aside from the narrow categories of judicial review) would be to the Ombudsman, which is insufficient.

Review cycle

We generally agree that risk assessment and other triggers noted in the Draft Report (p 42) are appropriate to drive licence reviews, however suggest the following additional triggers:

- a more frequent review schedule where a licence holder has a poor environmental record;
- where new pollutants are listed under the NEPMs appropriate reviews should be triggered;
- where there is a significant level of community or public concern in respect of a premises or its activities.

We think it is useful to include as triggers circumstances where review '...may be needed to address a contemporary environmental issue [or]... may be needed to address an emerging regional or local issue.'³ However, these triggers require further development, detail and transparency.

³ EPA *Draft Report*, 42

Our point above regarding significant levels of community concern should inform review triggers in this regard.

Publication of information

The EDO has made previous submission on the scope of information that should be routinely published by the EPA. These submissions were included in the Krpan Review into compliance and enforcement at the Agency, at Appendix 20.1.

We thank you for the opportunity to comment on the Approvals Review and we would be pleased to meet with you to discuss this at a time that is convenient.

Yours sincerely

A handwritten signature in black ink, appearing to read 'EMcKinnon', with a long horizontal flourish extending to the right.

Elizabeth McKinnon
Law Reform Director
Environment Defenders Office (Victoria) Ltd