

Summary

Post Implementation Review - Environmental Permitting (England and Wales) Regulations 2007

February 2011



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Published by the Department for Environment, Food and Rural Affairs

Background

1. The Environmental Permitting Programme has been part of the Better Regulation agenda carried out across Government to make regulation simpler, cheaper and more proportionate to the risks that it regulates. The Programme's aim has been to make environmental permitting more predictable for businesses, while maintaining the same level of environmental protection; and to simplify permitting processes.
2. The first phase of the Programme aimed to reduce administrative burdens on industry and regulators by creating a single regulatory framework in England and Wales for Waste Management Licensing (WML) and Pollution Prevention and Control (PPC) activities. The Environmental Permitting (England and Wales) Regulations 2007 (hereafter EPR) came into force on 6 April 2008. The post implementation review attempts to assess the early effectiveness of these Regulations.
3. The regulatory framework was designed so that it could be extended to other permitting and compliance systems, leading to further savings to industry and regulators. There has since been further expansion through the Environmental Permitting (England and Wales) Regulations 2010 bringing additional consenting regimes into the framework, notably those relating to groundwater, water discharges and radioactive substances. However, this report is restricted to the implementation of EPR 2007.

The Impact Assessment

4. The Regulatory Impact Assessment (RIA) for EPR forecasted costs and benefits associated with introducing the Regulations. Where possible, the monetary costs and benefits of the proposals were forecast. Where this was not possible, an attempt was made to quantify the relevant costs/benefits in other ways, or to identify them qualitatively. The original RIA that accompanied EPR estimated that the single simplified framework would generate net benefits of £55.2 million in the reduction of administrative burden to industry and the Environment Agency over 10 years (a further £21.2m was forecast in relation to wider industry benefits). The review provided an initial assessment of the benefits accrued to date and an early assessment of whether the prediction over ten years was likely to be accurate.

Methodology for the review

5. The review consisted of an assessment of the predicted costs and benefits as set out in the RIA against outcome measures 18 months after EPR had been in force, based primarily on data provided by the Environment Agency. It also included a qualitative assessment drawn from discussions with Environment Agency staff, industry representatives and LACoRS (now LGR) staff. The number of interviews was small: 13 face-to-face interviews with permitting centre staff, five with compliance officers and two LACoRS advisers returned questionnaires. To assess

the costs and benefits to industry, 362 companies were contacted from which 51 interviews were conducted. The industry findings were supplemented by a limited number of face-to-face discussions between Defra officials and trade associations to gauge their experiences of the impact of EPR.

Limitations of the review

6. Whilst the review was, as far as possible, an evidence based assessment of the impacts of the EPR, it is important to bear in mind the limitations of what can be achieved in a project of this nature, notably:

- the EPR were introduced at a time of other considerable change within the Environment Agency as they restructured to provide national permitting and administrative centres. This impacted on how the Agency administered and issued environmental permits, and on how businesses interacted with it. Separating out the impact of these background changes from those directly relevant to the implementation of the EPR was not always possible, particularly when reflecting industry experience of them;
- the review was based primarily upon a series of interviews with the Environment Agency and industry representatives, with the latter filtered to enable a direct comparison of experiences both before and after the implementation of EPR. Whilst attempts were made to ensure that these experiences were similar, the difference in activities, even within each category, was wide. And the number of interviews conducted was small. Consequently, the figures representing change in time and cost to undertake any particular activity should be treated with considerable caution;
- the period of the review was based on figures taken from Agency data using 12 months from November 2008 to October 2009 so allowing for a direct comparison of annual data used in the RIA. This coincided with the bedding in period for EPR and was unrepresentative of the steady state (for example, just before the legislation came into force, there was a surge of applications for WMLs as operators were unsure of the new requirements, resulting in an unanticipated later drop in applications);
- some of the elements within the RIA were not subjected to any form of validation test either because the data simply were not available or the quality of the data was such that no conclusions could be drawn.

Findings

Costs and benefits to the Environment Agency

7. In total, savings in the order of £19.6m (36% of the total) were anticipated to be made by the Environment Agency. Of these, most of the saving was expected to be related to the introduction of standard permits and the savings to compliance staff through improved guidance etc. The review identified the following outcomes:

- on **preparing for EPR**, costs were much higher than anticipated and occurred over three years rather than two (i.e. included the first year of implementation as well);
- the anticipated overall **transition costs** were reflected post-EPR although there were variances within this, notably in relation to increased costs associated with adapting procedures and reduced costs for amalgamating public registers;
- greater savings were realised on **variations and transfers**, with an increase in actual numbers applying;
- fewer **surrender** applications were made than estimated but their determination time was quicker;
- there were fewer applications for **standard permits** than anticipated but their determination times were equal to the estimates as were the proportion of permits issued between bespoke and SPs. The anticipated determination time for **bespoke permit** applications was overestimated, increasing the cost savings;
- **staff and IT savings** were yet to be fully quantified due to difficulties in obtaining accurate data or because systems had yet to come on stream.

8. Not all the costs and benefits were able to be tested and validated but of those that were, a mixed picture emerged with some elements leading to additional savings over and above estimates and vice versa. The overall picture for those that have been validated, the EPR is set to lead to benefits to the order of £9.6m NPV over 10 years, just over 95% of the anticipated savings.

Findings of the qualitative assessments – Environment Agency

9. This section highlights the key points raised in response to the more qualitative questions asked during the interviews. The findings included:

- **the overall view** of EPR expressed by the waste permitting staff was overwhelmingly positive, with PPC staff more cautious in their comments. Support was expressed for the flexibility and consistency provided by the new regime as well as to the clarity and greater efficiency of its processes. Some expressed concerns about the resource-intensiveness associated with determining bespoke permits and apprehension about whether the new computer system would be adequate to meet the needs of the system;
- **the application procedures** were considered to be more efficient with support expressed for the move to consolidated permits. There were mixed views about the extent to which efficiency gains had been realised and some worry about a perceived 'one size fits all' approach to determining IPPC applications arising from the use of common operational instructions and application forms;

- there was overwhelming support for the **introduction of standard permits**. Officials' experience was that applications for SPs had frequently failed to meet the qualifying criteria but that this number was decreasing. Another observation was that some operators had been applying for SPs then submitting variations for them to become bespoke permits, seen as a quicker and cheaper option;
- mixed views were expressed about the **supporting guidance** to EPR. Most considered it to be an improvement – more intuitive, better structured, more streamlined – but that further improvements could be made;
- some **specific difficulties** experienced during the transition phase were highlighted, for example in preparing staff for the introduction of EPR and having fully operational IT systems in place. A **number of improvements** were suggested, for example the need to simplify the bespoke permitting process and having better guidance for more complicated applications, with greater involvement of permitting teams in developing the overall permitting process; and better pre-application guidance.

Findings of the qualitative assessments – Local Authorities

10. The two responses from LAs provided some observations:
- it had become easier to refer to and quote one set of Regulations than trying to remember various different ones, and where the boundaries and crossovers applied; permits would also be easier to maintain and regulate;
 - it was noted that getting to grips with the new system was challenging following the implementation of EPR; neither respondent had yet noticed a change in the number and length of inspections as a result of EPR.

Costs and benefits to industry

11. Information in this section is drawn from a limited number of interviews with company representatives who had experience of pre- and post-EPR. The majority of the comparisons have not been able to be quantified. The main findings were that:

- it was impossible to assess the **transition** costs as the limited amount of information suggested wide differences in the time taken on familiarisation with EPR;
- no **single applications** for multiple sites had been received during the period of the study so no savings had accrued;
- overall, based on very few interviews, savings on **permit variations and transfers** were broadly similar to the RIA but with disparities within the estimates in relation to WML and PPC applications;

- there were encouraging signs for future savings on **permit surrenders**, broadly commensurate with RIA estimates;
- less encouragingly, comments on the **standard/bespoke permit** application process suggested that more found the processes slower and more expensive than cheaper and quicker but generally too inconclusive to draw firm conclusions;
- mixed response on whether there had been improvements on the **guidance** with no valid quantifiable data available.

12. The outcome from interviews with industry representatives was highly varied with a consensus rarely shown. This lack of consensus has made it difficult to draw any firm conclusions about the impact of EPR on industry. However, the early indications could suggest that the full estimated savings projected in the RIA may not be achieved.

Findings of the qualitative assessments – industry

13. The following comments were received from industry representatives during the questionnaire exercise:

- there was **generally positive** feedback regarding EPR. The system appeared to be working well and having one system was seen as a definite improvement;
- the majority of respondents found the **guidance** useful – simpler, less extensive, more self-explanatory. However, some expressed a contrary opinion that it was difficult to interpret, with it being less prescriptive and not activity specific. Some stressed the importance of having application discussions with the Agency to clarify requirements;
- in response to questions about their experience of **dealing with the Environment Agency** since EPR had come into force, respondents noted that any changes, such as they were, were largely unrelated to EPR. Some expressed concern about the perceived lack of transparency as to how applications were processed and determined; and about the loss of local knowledge following the restructuring of permit processing;
- a mixed view was given by interviewees on the **impact of the new system** on them, with more comments being negative than might have been expected. Some felt that a disproportionate amount of paperwork still had to be provided and that it was not always possible to save forms electronically. Others commented that the application process had become longer. The move to more general permit conditions where the onus fell on the operator rather than the regulator placed a greater responsibility on the operator to show compliance. This was seen as providing more flexibility and advantageous;

- some suggestions were made to **improve processes** and procedures: reduce the administrative burden associated with permit applications; more involvement of local officers so that the criteria could be assessed in the context of the local environment; and more consolidation of permits.

14. The questionnaire exercise with industry representatives was built upon by four additional discussions with other industry representative bodies, the overall conclusions from which were that:

- the standardisation and streamlining of permitting were welcomed, with more flexibility but with permit conditions remaining at least at the same standard of protection;
- guidance was generally welcomed but it was felt that further improvements could be made in reducing its volume; and in speeding up IT and other processes more generally;
- the move to national permitting had resulted in a loss of local area expertise making problem resolution more difficult.

Conclusions and way forward

15. The review paints a mixed picture. While the verifiable data provided by the Environment Agency suggest that 95% of the anticipated savings provided in the initial RIA were achieved post-EPR, the gaps in the data make it impossible to be certain about whether the full estimated savings have been realised. The findings from interviews with industry representatives are unreliable, based on few responses and with no consensus emerging.

16. Nevertheless, the general impression is that there is support for the principles and aims of EPR. Respondents, both business and regulator, welcomed the increased flexibility and streamlining enabled by EPR and with the way in which the Environment Agency was approaching putting these into practice, recognising that further improvements could be made to processes and procedures. It should be noted that the EPR provides a platform for change and the associated benefits would only likely to be fully realised over a 10 year period.

17. The review period of the study coincided with much change within the Environment Agency and it has clearly taken more time than expected for them, other regulators and business to understand the new framework and for systems to be bed in. Improvements to way in which the Environment Agency operates the EPR, associated guidance and its support systems, particularly IT, continue to be examined to offer a better service to customers. For example, since the period of the review (and bearing in mind that some of the improvements relating to the first phase of the programme were implemented as part of the second phase), a much wider range of standard rules has been published and faster processes have been implemented to determine standard permit applications. The Environment Agency's pre-application guidance has been improved, including the publication of charging explanation sheets, leading to a significant drop in the number of permit applications not being duly made due to incorrect fees. Furthermore a review of the permit

application system has been carried out. This included a review of the application form which now incorporates a simple administrative variation section.

18. Some lessons emerge from the review process:

- with hindsight, the review was undertaken too soon after implementation of EPR; a longer interval would have allowed the new culture and systems to bed in, allowing a more complete picture to emerge;
- a much larger study of industry experience would have produced more reliable results;
- it is important that effective monitoring of the impact of EPR, now widened to include additional consenting regimes, continues, so that a subsequent PIR, to be carried out in 2012, can produce verifiable and accurate data to compare Impact Assessment estimates with out-turn costs and benefits.