

A review supported by the
Better Regulation Executive
and National Audit Office

Effective inspection and enforcement:

implementing the Hampton vision in the Environment Agency

Foreword

Philip Hampton's report: *Reducing administrative burdens: effective inspection and enforcement*, published in 2005, is one of the cornerstones of the Government's better regulation agenda. The principles of effective inspection and enforcement set out in the report, putting risk assessment at the heart of regulatory activity, are designed to encourage a modern regulatory system which properly balances protection and prosperity. Since 2005, the Government has established an expectation that regulators will embed these principles in their approach to regulation.

In November 2006, the Chancellor of the Exchequer invited the National Audit Office and the Better Regulation Executive to develop a process of external review to assess how much progress regulators had made in implementing the principles of Hampton.

The first five regulators assessed under the process of 'Hampton Implementation Reviews' are amongst the most significant in this country. The Environment Agency, Financial Services Authority, Food Standards Agency, Health and Safety Executive and Office of Fair Trading regulate millions of businesses, covering some key areas of economic activity, whilst protecting the interests of us all. How they carry out their regulatory activities matters.

Full implementation of Philip Hampton's recommendations is a journey that could take several years. This review is a 'snapshot' in time of the progress of each regulator towards his vision.

Each of the reviews found examples of innovation and initiative by regulators who continue to move the regulatory agenda forward, as well as areas for further improvement.

The assessments were carried out by teams of reviewers with wide-ranging experience and expertise in the field of regulation. Talking to a wide range of stakeholders, to staff at all levels within the regulator's organisation, through visits to business sites and analysis of data and papers, the review teams, supported by staff from the Better Regulation Executive and the National Audit Office, have reached the findings and conclusions set out in this report. The final reports reflect the judgement of these review teams on the basis of the evidence put before them.

We would like to thank all of those who contributed to making these reviews a success. In particular, we are grateful to the regulators and their staff for providing support and making evidence available to the review teams, and to all the organisations that generously gave their time to offer evidence to the reviews.

Finally, we are extremely grateful to all our reviewers, and their employers, for their involvement, enthusiasm and commitment to this project. We hope that, like us, they found it valuable and rewarding.



Jitinder Kohli
Chief Executive
Better Regulation Executive



Ed Humpherson
Assistant Auditor General
National Audit Office

Contents

	Page no
Summary and conclusions	5
Introduction	12
The Hampton vision	15
Design of regulations	19
Advice and guidance	22
Data requests	26
Inspections	29
Sanctions	35
Focus on outcomes	37
Appendix 1	
Glossary	40
Appendix 2	
Numbers of permits and regulated sites	42
Appendix 3	
Review team membership	43
Appendix 4	
Conclusions of the Hampton and Macrory reviews	44
Appendix 5	
Review scope and methodology	46

Summary and conclusions

This is one of a series of reviews of regulatory bodies undertaken at the invitation of HM Treasury and focusing on the assessment of regulatory performance against the Hampton principles and Macrory characteristics of effective inspection and enforcement. It was carried out by a team drawn from the Better Regulation Executive, the National Audit Office (NAO), the Trading Standards Institute and the Better Regulation Commission, supported by staff from the Better Regulation Executive, the NAO and the Food Standards Agency (see Appendix 3 for review team membership).

The Hampton report¹, published in 2005, is one of the cornerstones of the Government's better regulation agenda and regulators have been working since to embed his principles in their approach to regulation. This review process is designed to identify where a regulator is on the road to full implementation and the issues each needs to address to become Hampton-compliant.

The review team is grateful to the Environment Agency, whose staff were extremely helpful and generous with their time, experience and expertise. We also welcome the input from the EA's stakeholders, whose contribution was invaluable in understanding the impact of regulators and regulations on their operations.

What we found

Overall we have found that the Environment Agency (EA) has taken significant steps to implement the Hampton agenda. This is in the context of a challenging background: the regulations which the EA is responsible for implementing originate largely from Europe and have accumulated over time to form a complex regime. There is further progress to be made in translating the strong lead shown at senior

levels to the day-to-day experience of individual businesses. At present, better regulation is certainly in the language of the organisation, but it is not yet embedded throughout its culture.

- **The EA has had a strong commitment to better regulation over a number of years.** The EA Board and Chief Executive are clearly committed to modern regulation and are taking the lead in embedding this within the organisation. This is reflected in the EA's work to re-examine various aspects of its operations, its move towards a more risk-based approach to regulating, and its efforts to influence debate in Europe.
- **The EA has made encouraging progress in implementing the Hampton principles.** The EA has taken forward a number of initiatives to support its modern regulation programme. These include, for example:
 - the instigation of a Regulatory Scrutiny Panel to provide internal challenge to legislative and policy development;
 - the Operator and Pollution Risk Appraisal (OPRA) as a tool for assessing environmental risk; and
 - the recent implementation of the agricultural waste regulations with a high degree of consultation with the farming sector.

There is scope for OPRA to be used more effectively to incentivise compliance and to inform risk-based interventions, as explained further on page 15.
- **The EA is making progress in reducing the burden of regulations on business.** The EA has made considerable efforts to rationalise and simplify the complex EU

¹ *Reducing Administrative Burdens: Effective Inspection and Enforcement*, Philip Hampton, March 2005

Directive-driven regulatory environment, from the viewpoint of regulated industries. Notable initiatives so far include the removal of some activities from regulation, such as some water abstraction activities and some low-risk hazardous waste activities. Other examples include:

- NetRegs, a web-based source of environmental guidance for businesses – although relatively few businesses actually use this resource;
- the National Customer Contact Centre (NCCC), which provides a single telephone point of contact and advice for business and public enquiries;
- the Environmental Permitting Programme (due to be implemented shortly), which will further build on the Pollution Prevention and Control (PPC) covering the discharge of damaging substances into the environment, and also incorporate waste management licensing into one simplified regime; and
- the Integrated Regulation programme (due to be implemented shortly), software which will bring together all the EA’s online regulatory activities, including permit applications and payments.

Further work is required regarding the rationale for undertaking inspections and requiring businesses to collect monitoring data, as these continue to place burdens on business whilst often having no clear link to environmental outcomes.

- **The EA is taking a lead in Europe in driving the better regulation agenda.**

The EA is using its influence to work with the European Commission and agencies in other member states to help ensure that new regulations are in line with the principles of better regulation.

- **There is general agreement amongst business stakeholders that the EA uses prosecutions in a fair and proportionate way.**

There is also recognition that, in some areas, the EA lacks the range of sanctions that would enable it to maximise its effectiveness in implementing regulations.

- **The EA has made notable efforts to improve the quality of its written advice, forms and publications.**

The EA has invested time and resources into producing new guidance and forms that are accessible and easy to read or complete. Recent external documents are written in plain English and the number of documents is being reduced. There are some good examples of guidance being produced in consultation with businesses, although there remains a significant legacy of written publications which are somewhat older and do not meet the EA’s new standards. This and other initiatives would have greater impact if there was a more strategic approach to coordinate the different strands of advice and guidance provision: the EA reported that it has started to develop such an approach.

Issues for follow-up

The following table sets out the key issues that the review team believes the EA needs to address to meet the Hampton criteria more

fully, measured against some of the symptoms² we were looking for to provide evidence of Hampton compliance.

Issue to be addressed	Hampton symptom
<p>Focus on environmental priorities</p> <p>At a corporate level the EA is clear about the environmental outcomes it is trying to deliver. Its Board monitors progress on these outcomes and the EA publishes documents which explain the latest state of play, showing that many of these outcomes are being achieved.</p> <p>The EA believes that its day-to-day regulatory activities, encompassing, for example, inspections and data collection, contribute towards achieving the outcomes. The EA was unable, however, to provide firm evidence to support this causal link.</p> <p>Some regulatory regimes, for example, have historically been heavily reliant on inspection as a tool to ensure compliance, and the EA has sought to take a more risk-based approach and has removed a number of activities from regulation altogether, as mentioned above. But absolute levels of inspection remain high relative to other regulators, and while many EA staff feel strongly that there is a link between inspection frequency and securing environmental outcomes, the EA did not supply us with any evidence of this. Similar issues apply to data collection. The EA needs to clarify the rationale behind the numbers of inspections and audits it undertakes and the data it collects (or requires business to collect), and to communicate this to its staff, businesses and other stakeholders.</p>	<ul style="list-style-type: none"> • The regulator focuses its greatest inspection effort on businesses where risk assessment shows that both: <ul style="list-style-type: none"> – there is a likelihood of non-compliance by businesses; and – the potential impact of non-compliance is high • Regulatory activity can be linked to the achievement of outcomes

² From *Hampton Implementation Reviews: Guidance for Review Teams*, National Audit Office and Better Regulation Executive, May 2007

Issue to be addressed	Hampton symptom
<p>Maximising the impact on regulatory outcomes</p> <p>In some areas, such as waste management licensing, there is a danger that the EA focuses disproportionate energy on those who are largely compliant with the law rather than businesses who operate illegally or on developing innovative ways to improve environmental outcomes.</p> <p>In part, this appears to result from the charging regime, under which the EA is unable to use funds from licensees for activities to target those businesses operating illegally outside the permitting, licensing and registration regimes. The charging regime incentivises the EA to ‘provide a service’ to licensees, even where the impact on environmental outcomes may be marginal. We also found some evidence that the charging regime may constrain the EA’s ability to develop more innovative approaches to regulation, such as marketing campaigns and providing advice.</p> <p>The EA, the Department for Environment, Food and Rural Affairs (Defra) and HM Treasury should explore how the charging regime might be made more flexible.</p>	<ul style="list-style-type: none"> • Regulators should concentrate resources on the areas that need them most • Regular offenders should be identified quickly

Issue to be addressed	Hampton symptom
<p>The impact of the EA’s activities on business</p> <p>The EA has put in place processes to improve consistency in the way that regulations are implemented. This was in part a necessary result of the EA’s formation from the merger of the previous regulatory bodies and their respective regulatory regimes, as well as a response to concerns raised by business.</p> <p>We met some very impressive, confident and experienced local enforcement staff who worked with businesses to improve environmental outcomes whilst minimising the regulatory burden. Our work also highlighted instances where enforcement at a local level is seen by regulated businesses as being over-rigid, with little consideration of the impacts on business or the relationship to the actual benefit to the environment of enforcement activities. This may in part be due to constraints within legislation.</p> <p>In addition, in some specific areas of the EA’s business, principally the Pollution Prevention and Control (PPC) regime, businesses raised significant concerns about perceived differences in how sites were treated. In part, this results from the permitting regime, where there is a legacy of permits with differing conditions. Over time, this problem will resolve itself, but the EA should consider accelerating the pace of change.</p> <p>We recognise that there will always be an inherent tension between delivering national consistency whilst also being able to respond to specific circumstances.</p> <p>We also saw that the EA has processes in place for the resolution of tensions through communication between environment and policy officers. However these processes are not as widely understood or used by Environment Officers as they might be.</p>	<ul style="list-style-type: none"> • Enforcement actions are proportionate to the seriousness or persistence of, and potential commercial gain from, the compliance breach • Where appropriate, businesses are given the opportunity to respond to and suggest alternatives to proposed enforcement action

Issue to be addressed	Hampton symptom
<p>Operator and Pollution Risk Appraisal (OPRA)</p> <p>As a framework for assessing risk, there is a great deal of support from business for the principles underpinning OPRA. The model has also been recognised as ‘best practice’ in the Hampton Report³ and by the European Commission⁴. The review team feels, however, that more could be done to ensure that OPRA is used to its full potential. As it is currently formulated, improved compliance does not always have a significant impact on a business’s OPRA score and therefore on its levels of inspection or fees. There is therefore scope for OPRA to offer a greater incentive for increased compliance, for example if there was a greater differential in fees and inspection levels between compliant and non-compliant businesses of a similar nature. We recognise, however, that incentives in charging schemes are difficult to apply where the principle of cost-recovery is rigidly applied.</p>	<ul style="list-style-type: none"> • Compliance records/good performance are taken into account, with good performers visited less frequently
<p>Relationships with Government and other agencies</p> <p>As the regulator responsible for implementation, the EA (along with its UK equivalents) has a key role to play in ensuring that regulations are workable. Businesses are looking for greater clarity about implementation timescales for new regulations, how the regulations will impact on them and how any transition arrangements will work.</p> <p>In designing new regulations, where strong project and programme management has been exercised, the EA and Defra have demonstrated the ability to work effectively together, for example in developing the forthcoming Environmental Permitting Programme. We are concerned, however, that this is not routine across all relationships with Defra and other government departments with the result that implementation of new regulations has sometimes been weaker.</p> <p>The EA and Defra should continue to develop their joint working arrangements, and other government departments, along with the EA, should seek to replicate this approach when working together.</p>	<ul style="list-style-type: none"> • Where regulations are not designed by the regulator, the regulator uses all means available to shape the regulation

³ *Reducing Administrative Burdens: Effective Inspection and Enforcement*, Philip Hampton, March 2005

⁴ *Streamlining and Simplification of Environment Related Regulatory Requirements for Companies: Final Report of the BEST Project Expert Group*, May 2006

Issue to be addressed	Hampton symptom
<p>The role of advice and guidance</p> <p>The EA has taken forward some good initiatives to provide better advice and guidance to business, for example the National Customer Contact Centre and the NetRegs website. These initiatives seem, however, to have been developed in a piecemeal way without any sense of an overall strategy for the provision of advice and guidance. Market penetration levels for initiatives such as NetRegs remain very low and the EA's own website is currently inadequate as a source of quick and effective guidance, either externally or for EA staff. We are also concerned that some local enforcement staff do not see offering advice as part of their role.</p> <p>The EA should urgently deliver its planned improvements to its website and act to improve business awareness of where to go for advice and guidance. It also needs to develop a broad strategy for advice and guidance – something which it is in the early stages of developing – which ensures that businesses can and do receive quality practical advice on what to do to comply.</p>	<ul style="list-style-type: none"> • Advice and guidance are accessible and accessed • The regulator is aware of businesses' preferred information sources, and a strategy for disseminating/marketing guidance which takes into account these preferences is in place

Introduction

1 This review of the Environment Agency (EA) aims to provide a structured check on performance against the principles and characteristics set out in the Hampton⁵ and Macrory⁶ reports (see Appendix 4). The team reviewed the EA against a performance framework⁷ developed by the Better Regulation Executive and the NAO which provides a guide for reviewers on the kind of evidence to look for and questions to consider. However, the process is not the same in scope or depth as a full value for money audit of economy, efficiency and effectiveness and the review team's conclusions are based on a combination of evidence and judgement. In common with the reviews of other regulators, it is beyond the remit of this review to recommend whether a regulator should be awarded the new administrative sanctions currently set out in the Regulatory Enforcement and Sanctions Bill. A brief description of the scope of the review and methods employed is at Appendix 5.

2 The EA was established by the Environment Act 1995, becoming fully operational on 1 April 1996. It is a Non-Departmental Public Body of Defra and an Assembly Sponsored Public Body of the National Assembly for Wales.

3 The EA's vision is stated as:

*"A better place for people and wildlife, for present and future generations."*⁸

4 Legally, the Board of the EA constitutes the Agency. It comprises 14 members, including the Chairman and Chief Executive. All are appointed by the Secretary of State

for Environment, Food and Rural Affairs, except for one member appointed by the National Assembly for Wales.

5 The EA covers England and Wales and operates on a regional basis. There are eight regions and at present there are 23 area offices within those regions, responsible for the day-to-day management of the area and responding to the needs of the local community. The areas within some regions have recently been re-structured.

6 The other UK environmental regulators are the Scottish Environment Protection Agency (SEPA) in Scotland and the Environment and Heritage Service in Northern Ireland.

Resources

7 The EA has a staff of around 12,000 of which approximately 3,500 (29 per cent) are front-line enforcement staff. Total expenditure in 2006-07 was £1.065 billion:

- £581 million (55%) on flood risk management;
- £311 million (29%) on environmental protection (preventing and controlling pollution); and
- £173 million (16%) on other water management functions.

This is funded mainly by grant-in-aid from government (60%) and through statutory charging schemes and flood defence levies (35%).

Environmental context

8 In 2005, the EA published its latest *State of the Environment* report⁹ which sets out

⁵ *Reducing Administrative Burdens: Effective Inspection and Enforcement*, Philip Hampton, March 2005

⁶ *Regulatory Justice: Making Sanctions Effective*, Final Report, Professor Richard Macrory, November 2006

⁷ *Hampton Implementation Reviews: Guidance for Review Teams*, National Audit Office and Better Regulation Executive, May 2007

⁸ *Creating a better place: Corporate strategy 2006-2011*, Environment Agency, April 2006

⁹ *State of the environment 2005: Our environment – how it is*, Environment Agency, May 2005

its assessment of the environment, including what has changed since the previous report in 2000. Of interest to this review, in terms of improvements:

- Cuts in pollution from regulated industry continue – since 2000, sulphur dioxide emissions from EA-regulated sites have fallen by 15 per cent and particles have gone down by 48 per cent;
 - Serious pollution incidents have fallen since a peak in 2001, with 1205 incidents recorded in 2003;
 - The quality of urban rivers has improved, mainly because of better sewage treatment;
 - Odour complaints to the EA fell by over half between 2000 and 2003;
 - Since 2000, pollution of rivers and seas with hazardous substances has fallen; and
 - Serious pollution incidents caused by the waste management sector went down by a quarter between 2002 and 2003.
- 9 Set against this, the report highlighted:
- In 2003 only 65 per cent of rivers in England and Wales were of 'good' or 'very good' chemical quality;
 - Over half of England's rivers had high levels of phosphate – much of this is diffuse pollution from urban and agricultural land use; and
 - Illegal and unlicensed waste activities continued to pose a risk to human health and the environment.
10. In addition, the 2006 *Spotlight on Business*¹⁰ report reported that the environmental performance of the businesses regulated directly by the EA was improving when judged by reference to OPRA scores (see paragraph 16). There were 24 per cent fewer serious breaches in 2006 compared to 2005 from regulated

sites, and serious pollution incidents caused by all industry are the lowest on record.

Charging and permitting regimes

- 11 The EA's charging schemes are operated on a cost-recovery basis with income from charges, and the deployment of the resource that is funded, ring-fenced within a particular regulatory regime.
- 12 Charges are levied for issuing a permit, and there is generally an annual subsistence fee which reflects the EA resource required to ensure compliance with the terms of the permit. The EA uses two types of permit:
- standard permits, which generally apply simple controls to operations that have a low potential environmental impact; and
 - bespoke permits, which cover those operations that have a higher potential environmental impact.
- 13 The key regimes that were covered in our review are:
- Environmental Permitting Programme (EPP) – a multi-phased initiative that, when complete, will provide a common permitting regime for operators; bringing together waste and PPC regulation (see below), whilst simplifying supporting documentation and information systems into one joined-up risk-based regime. It also provides a platform for the integration of future EU Directives, and further integration of permitting regimes;
 - Pollution Prevention and Control (PPC) – this regime is designed to apply an integrated environmental approach to the regulation of certain industrial activities and covers the discharge of damaging substances into the environment by businesses. It brings together many

¹⁰ *Spotlight on business: Environmental performance in 2006*, Environment Agency, July 2007

different pieces of EU legislation that are designed to protect the quality of air, land and inland and coastal waters. PPC will be further developed within EPP (see above);

- Waste Management Licensing (WML) – most waste is subject to waste legislation and handling it requires an authorisation. The EA regulates the treatment and disposal of waste through a system of waste management licensing and through PPC permits for the largest and most complex waste operations;
- Water Abstraction – the EA is responsible for managing the water resources in England and Wales. In most circumstances, an abstraction licence is

required to remove or abstract water from a surface source (eg river, stream or canal) or from an underground source and to take more than 20 cubic metres (approximately 4,400 gallons) a day; and

- Water Discharge – it is an offence to cause or knowingly permit trade and sewage effluent to enter directly into controlled waters (surface waters or groundwaters) without prior written authorisation. A permit can be issued by the EA, subject to conditions, such as a discharge consent or a groundwater authorisation.

Further information about the EA's charging and permitting regimes can be found in the glossary at Appendix 1.

The Hampton vision

- 14** Both the Hampton and Macrory reports are concerned with effective regulation – achieving regulatory outcomes in a way that minimises the burdens imposed on business. Key to this is the notion that regulators should be risk-based and proportionate in their decision-making, transparent and accountable for their actions and should recognise their role in encouraging economic progress.

Risk-based

- 15** The review team found that the EA generally understands and implements a risk-based approach to regulation at the broad policy level. It has taken a proportionate approach to regulating a number of low-risk activities:
- The EA's 'low-risk waste panel' considers which activities should be regarded as low risk and publishes a list of low-risk activities on its website. Where the 'low risk' criteria are met, the EA does not normally pursue enforcement action against operators carrying out these activities;
 - The EA has secured derogation for 500,000 low-risk hazardous waste producers who no longer need to register. The EA estimates that this initiative represents a saving to the industry of around £14 million a year; and
 - From 1 April 2005 holders of 23,000 low-risk water abstraction licences were released from the licensing regime. The EA estimates these businesses, around 48% of abstraction operators, will save approximately £1 million a year in total.
- 16** Operator and Pollution Risk Appraisal (OPRA – see box overleaf) is also a key element in the EA's risk-based approach. The review team found a great deal of support for the principles underpinning OPRA amongst businesses and front-line

inspectors, and recognises that it delivers a good framework for assessing risk. However it is not clear that OPRA is being used to its fullest potential. There is a general view that although OPRA is a good tool for broad risk assessment it does not necessarily work well at individual site level. Both EA staff and businesses from across a range of industries reported that, as OPRA is currently formulated, 'operator performance' and 'compliance rating' receive relatively low weightings in the overall score, compared with 'complexity'. So, for example, a complex site will always score highly, regardless of its compliance record, and will therefore be unable to significantly affect its levels of fees and inspections by improving compliance. OPRA may provide a basis for the EA to deploy its own resources but the relative weightings applied to the elements making up the assessment do not appear to provide businesses with an incentive to improve compliance levels.

- 17** **We conclude that, within particular regimes, the EA understands and implements a risk-based approach to regulation, through its OPRA methodology or other systems, although there remains room for improvement. Refining and using OPRA to its full potential would enable the EA to provide a further incentive to individual businesses to improve compliance.**

Transparency and accountability

Transparency

- 18** The EA makes efforts to be transparent in the way in which it undertakes its regulatory activities. There is a Customer Charter on the EA's website and information is readily available regarding how to contact the EA and how to make a complaint. Also on the website are Board papers and consultation responses.

Case example – Operator and Pollution Risk Appraisal (OPRA)

OPRA was devised by the EA as a tool to assess the environmental risk of an activity: it considers the hazards associated with an activity and how well they are being managed.

There are five elements of OPRA, each of which is graded from A (low risk) to E (high risk). The five elements are:

- **Complexity** (eg activities carried out; potential for accidents; size; public confidence)
- **Location** (eg proximity to habitation; proximity to sensitive sites; potential for direct releases to water; flooding; air quality management zones)
- **Emissions** (eg type and quantity; media; impact)

- **Operator performance** (eg presence/absence of management systems; enforcement history)
- **Compliance rating** (eg compliance with permit conditions; potential impact of non-compliance; additional effort to manage non-compliance).

The resulting 'banded profile' of A–E scores allows the EA to target operators who present the highest risk. The bands also provide a basis for operators' subsistence charges: the annual fees paid to the EA by permit- or licence-holders, reflecting the differing levels of resource required by the EA to monitor compliance.

OPRA was introduced for the Pollution Prevention and Control (PPC) regime in 2003 and for Waste Management Licensing (WML) in 2005. The EA plans to roll it out to other regimes in the future.

Transparency is enhanced by the existence of a tool on the EA's website that enables businesses to calculate their own OPRA score (see box above).

- 19 *Spotlight on business*¹¹ is an annual publication detailing the environmental performance of regulated businesses. As well as high-level outcomes information, such as overall levels of greenhouse gas emissions from regulated businesses, the report names both good and poor performers.
- 20 The EA's corporate strategy documents are well-written and accessible. They contain a large number of aims, outcomes and targets that drive the EA's regulatory work, and, though relatively clear in the context of each of the EA's nine environmental goals it is not necessarily clear to businesses where the EA's priorities lie, either between

environmental outcomes or between regulated sectors.

- 21 A regulatory regime based on bespoke permitting does not easily support openness because permits are specific to the business. The EA's permitting process for both standard and bespoke permits includes public consultation and the production of decision documents to explain its permitting decisions. Some businesses, however, find it difficult to compare conditions and requirements between permits, even within the same industry, and so they do not perceive an entirely transparent process. Whilst we recognise that there is a need for some degree of 'bespokeness' in order to address local circumstances, there is general support from business for the move towards the greater use of standard permits.

¹¹ *Spotlight on business: Environmental performance in 2006*, Environment Agency, July 2007

Accountability

- 22** The EA regularly publishes performance information in various formats. These include:
- The EA's internal performance indicators, in the form of its 'Corporate Scorecard' are publicly available on a quarterly basis as part of the Board papers;
 - Performance against the targets set out in the Corporate Plan is published in detail in the Annual Report; and
 - High-level outcomes information is also published in the five-yearly *State of the Environment* report.
- 23** **We conclude that the EA is generally a transparent and accountable regulator. There are areas where transparency could be improved, for example around some aspects of permitting and the provision of advice and guidance, as discussed later in this report. The EA reported that it has work under way to address these issues.**

Encouraging economic progress

- 24** The EA operates in a complex environment characterised by regimes that have developed in the main from EU Directives. The NetRegs website lists 227 pieces of legislation (including amendments) and 16 EU Directives which the EA is responsible for implementing in England. The EA's website also lists six pieces of future EU legislation. This regulatory environment is supported by permits, licences, registrations and exemptions with different histories of risk-assessment and inspection regimes.
- 25** Against this backdrop, the EA is making significant efforts to streamline and rationalise processes for business, and the review team acknowledges that this has been a constant and important theme running through its activities. The EA is also
- working with Defra to ensure that each permitting platform is used to deliver as many Directive requirements as possible, rather than imposing the need for multiple permits. This approach has been applied particularly in the Pollution Prevention and Control (PPC) regime and the forthcoming Environmental Permitting Programme (EPP).
- 26** A number of businesses pointed to the commitment from the Chief Executive and Board to better regulation. Modern regulation, stemming from the 2002 Corporate Strategy and set out in *Delivering for the environment: A 21st Century approach to regulation*¹², has a high profile both within and outside the EA.
- 27** We met some front-line enforcement staff who clearly seek to balance their role in protecting the environment with the impacts on businesses of different regulatory requirements. We also met a number of staff, however, who do not seem to attach priority to achieving such a balance. We discuss this issue further on page 31.
- 28** Businesses are also concerned about the process of applying for permit variations, particularly the numbers of hardcopy applications they have to submit and the sometimes slow decision-making by the EA. The EA is attempting to address these issues by initiatives including: the Environmental Permitting Programme (EPP) to simplify the permitting process; and Integrated Regulation to e-enable the process.
- 29** Given the impact of European environmental legislation on UK business, the review team is encouraged to see the EA leading the debate on better regulation with the European Commission, MEPs and other environmental regulators.

¹² *Delivering for the environment: A 21st Century approach to regulation*, Environment Agency, January 2005

30 We conclude that, whilst the EA is driving forward its modern regulation programme and therefore removing burdens, its impact on economic progress could be further strengthened by a greater understanding of the impact of its day-to-day activities on businesses. The EA should also work to improve communication with staff and stakeholders about the links between regulation and environmental outcomes.

²¹ Under Part 8 of the Enterprise Act 2002.

Design of regulations

Hampton principles

“All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all parties should be consulted when they are being drafted.”

“When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed.”

Key findings

- **The EA has an increasingly positive working relationship with Defra but needs to work with the Department for Business, Enterprise and Regulatory Reform (BERR) to improve the effectiveness of their joint working**

Background

- 31** Responsibility for negotiating Directives and for devising UK environmental legislation lies with government departments. The primary Department is Defra (the Department for Environment, Food and Rural Affairs), though some major pieces of environmental legislation have been introduced by the Department for Business Enterprise and Regulatory Reform (BERR, formerly the Department for Trade and Industry) and the Department for Communities and Local Government (CLG). BERR tends to be the lead Department where regulations refer to issues around producer responsibility, for example the Waste Electrical and Electronic Equipment (WEEE) and Batteries Directives. This means that Departments, rather than the EA, are responsible for consultation, impact assessment and review at the policy-making stage, with the EA and the other UK environmental regulators responsible for implementation.
- 32** The EA seeks to engage as fully as possible in the process of development, review and transposition of legislation. To this end, joint working with Defra takes place within the terms of a concordat, agreed to by both organisations in 2003, providing a basis for working together on (primarily) international activities affecting the environment.
- 33** Within its regulatory activities, the EA most regularly consults with businesses and other stakeholders regarding the introduction of new or revised charging schemes. Consultation responses are published on the EA's website.
- 34** Internal challenge for legislative and policy development work is provided by the EA's Regulatory Scrutiny Panel (see box overleaf).
- 35** The EA has a number of mechanisms by which it seeks to influence the development of policy in Europe. These are described in the box on page 21.

Case example – Regulatory Scrutiny Panel

The EA has created a senior-level Regulatory Scrutiny Panel to help govern its work in legislative and policy development, and assess the effectiveness of its own regulatory activities.

The panel is chaired by the Director of Environment Protection and includes other

key directors. The Panel operates as a challenge panel at key milestones during the formulation and implementation of regulations. Its remit is to scrutinise the EA's regulatory activities and business change programmes to ensure they are outcome-focused, risk-based, clearly communicated and delivered in a consistent manner.

Review findings

The EA has an increasingly positive working relationship with Defra but needs to work with the Department for Business, Enterprise and Regulatory Reform (BERR) to improve the effectiveness of their joint working

- 36** The review team recognises the need for departments to be responsible for negotiating and introducing legislation, given their accountability through Ministers to Parliament. At the same time, we recognise the importance of input from the EA during policy development to ensure that policy can be implemented effectively and efficiently.
- 37** The EA has struggled at times to influence policy development at European and domestic level, with EA staff at all levels seeming frustrated at the difficulties this can cause; they often feel they are caught between departments and business, particularly when timetables slip. Businesses pointed to problems where insufficient implementation times and lack of certainty about policy meant they were unable to plan ahead and take strategic investment decisions.
- 38** The move within Defra towards programme and project management is having a positive impact, however, with the EA represented on project boards and secondments of EA staff to major projects. The review team hopes this will mean a

more consistent approach to involving the EA in the design of regulation so that it becomes fully embedded within Defra's working practices. A number of people pointed to the development of the Environmental Permitting Programme (EPP) as a good example of joint working between Defra and the EA. The review team found that the relationship between the EA and BERR is less effective, and the two organisations should work together to improve this. The aim should be to put on a formal and consistent basis the good practices that are currently dependent on individual working relationships and approaches.

- 39** There has been a positive response, particularly from the water industry, to the tri-partite groups that have been set up bringing Defra, the EA and industry sectors together to engage in horizon-scanning European proposals. Other sectors expressed frustration that this approach is not more widely used. The review team believes there should be a more strategic approach to establishing such groups.

Case example **– Influencing in Europe**

The EA has a European and International Relations (EUIR) team that seeks proactively to build relationships with the EU and other environmental protection agencies. The EUIR team has established bilateral, formal and informal networking links to improve understanding and to gain acceptance of the modern regulation agenda. Foremost amongst these are IMPEL (European Network for the Implementation and Enforcement of Environmental Law) and INECE (International Network for Environmental Compliance and Enforcement).

The EA also participates in the Network of European Environment Protection Agencies, which has produced reports examining the contribution of good environmental regulation to competitiveness¹³ and looking at the barriers to good environmental regulation¹⁴.

In addition, the EA provides quarterly newsletters to brief MEPs on, and raise awareness of, environmental issues.

¹³ *The Contribution of Good Environmental Regulation to Competitiveness*, Network of Heads of European Environment Protection Agencies, November 2005

¹⁴ *Barriers to Good Environmental Regulation*, Network of European Environment Protection Agencies, January 2007

Advice and guidance

Hampton principle

“Regulators should provide authoritative, accessible advice easily and cheaply.”

Key findings

- The EA has put considerable time and resources into ensuring that new guidance is written clearly
- There are some good examples where the EA has communicated clearly to business sectors on new regulations
- The penetration of NetRegs amongst SMEs is low
- The EA’s website is slow and it is difficult to find relevant documents
- There is a lack of clarity about the role of Environment Officers in providing advice to businesses
- There has in the past been no overarching strategy for the provision of advice and guidance

Background

- 40** The EA provides guidance in a range of formats including hardcopy leaflets available from area offices and distributed by staff, CD and e-information, and from a number of sources including its website, the National Customer Contact Centre (NCCC) and the NetRegs website (see boxes below).
- 41** The EA has processes in place to ensure good quality advice and guidance for business is developed. There is a gateway process that monitors for consistency, ensures information is up-to-date, provided in the most appropriate format for the intended audience and regularly reviewed and updated to reflect feedback. The processes also require routine consideration of how advice and guidance can best be delivered to the intended audience. This can mean that hardcopy leaflets are withdrawn or replaced by more specific web-based information to improve targeting.
- 42** The EA’s style and objectives for written guidance are set out in a guidance document for staff, *Write for the Environment Agency*, which was accompanied by the launch in 2004 of an extensive staff training programme in communicating in plain English, covering the whole organisation. Around 6000 staff (about 50%) have received training to date.
- 43** The EA seeks to engage business when it develops guidance, typically by consulting with trade bodies and industry liaison groups to ensure that draft guidance is appropriate and user friendly. Recent examples include consultation on agricultural waste regulations, Operator Pollution Risk Appraisal (OPRA) and *Delivering for the Environment*. The EA is currently formalising these links by putting in place a procedure for business reference groups. It also holds business advisory groups on a range of issues such as NetRegs and the Pollution Inventory.

National Customer Contact Centre (NCCC)

NCCC was established to provide a single point of contact and advice for the EA’s broad range of business and public enquiries. Businesses can receive one-to-one assistance in the completion of simple permit applications, which can then be rapidly processed and issued.

Call volumes for the 12 months from September 2006 to September 2007 included:

- 408,000 general enquiries;

- 85,000 hazardous waste enquiries; and
- 65,000 agricultural waste enquiries.

Regulatory issues dealt with by the Centre at present include:

- waste exemption registrations and renewals;
- waste carrier registrations and renewals;
- landfill allowance register;
- guidance on waste materials and new protocols;
- Waste Electrical and Electronic Equipment (WEEE) returns; and
- hazardous waste forms.

NetRegs

NetRegs¹⁵ is a web-based single source of free environmental guidance for UK businesses, operated as a partnership between the UK environmental regulators (the EA in England and Wales, SEPA in Scotland and the Environment and Heritage Service in Northern Ireland), and in collaboration with Business Link and Envirowise.

NetRegs was developed to target ‘difficult-to-reach’ businesses, particularly small- and medium-sized enterprises (SMEs). It aims to make advice and guidance available in a range of different ways; for example aimed at

specific business sectors and categorised by environmental topics. NetRegs also provides e-alerts to subscribers, with free guidance by email informing businesses of the latest changes to environmental regulations and what they need to know in order to comply. Subscribers can choose to receive updates that are relevant to their business as well as more general environmental guidance and legislation updates.

NetRegs is linked to and from other websites, including those run by local authorities, trade associations, Business Link and Envirowise.

Review findings

The EA has put considerable time and resources into ensuring that new guidance is written clearly

- 44 The review team was impressed with the time and resources that the EA has put into its written guidance and publications, training staff, focusing on plain English and achieving the Crystal Mark for a number of documents. We found documents prepared recently to be clear and accessible. The EA’s work with the agricultural sector on

waste is positive and there has been good feedback from the farming sector.

- 45 We received feedback from some businesses, however, that EA guidance sometimes lacks clarity in terms of what is required of businesses in order to comply with regulations. EA guidance on NetRegs also carries a disclaimer (set out below). Whilst a disclaimer in itself is not necessarily unusual, we feel that the statement that the EA “cannot be held liable for errors and omissions” particularly

¹⁵ www.netregs.gov.uk

NetRegs disclaimer

Important legal note

NetRegs contains simplified guidance based on complex and changing legislation, and does not constitute legal advice. Whilst we endeavour to keep it up to date,

we cannot be held liable for errors and omissions; compliance with the law remains the user's responsibility.

If you have concerns over compliance, you must seek professional advice, or contact your regulator or local authority.

may cause uncertainty for business about the extent to which they can rely on the guidance for regulatory purposes.

There are some good examples where the EA has communicated clearly to business sectors on new regulations

- 46** The EA's approach to the implementation of agricultural waste controls has been widely commended by the industry sector as a successful model for consultation and implementation. The EA worked with the industry to determine farmers' needs for advice and guidance on new agricultural waste requirements and PPC intensive farming regulations. This included their preferred format for guidance (hardcopy rather than e-information) and application forms. Forms and guidance for agricultural waste activities were considerably simplified following feedback from the industry on the early drafts, with the relevant application form and related guidance reduced from 75 pages to five.
- 47** This methodology was successful in raising the sector's awareness of the new regulatory controls and resulted in 'user-friendly' paperwork and application forms that were regarded as relatively simple to complete. The EA's National Customer Contact Centre was engaged in the process to ensure adequate preparation for dealing with related enquiries and the availability of information packs.

The penetration level of NetRegs amongst SMEs is low

- 48** Some businesses we spoke to commented on the quality of the NetRegs site: they feel it provides accessible and useful information tailored to the needs of small businesses. However, a 2007 survey showed that only 7% of SMEs were aware of NetRegs, and though EA targeting has increased the number of users by 40% over the last two years, the low penetration level suggests that it is not being used to its full potential. The review team believes there is more the EA and its partners could do to improve awareness levels amongst SMEs. If further developments to NetRegs are to have maximum effect, they should be part of a coherent wider strategy to develop advice and guidance for businesses (see paragraphs 51 and 52 below).

The EA's website is slow and it is difficult to find relevant documents

- 49** We received feedback from a large number of businesses and EA staff that the EA's main website is slow and unwieldy, and that much of the advice and information businesses need is on this site rather than the NetRegs site. Users find it difficult to locate the information they require, and some EA staff reported spending a long time trying to find specific information on the website when seeking to answer business queries. The review team welcomes the EA's commitment to improve the overall performance of the website,

focusing on reviewing accessibility, making the site more efficient and ensuring the quality and consistency of content. The EA anticipates that the new website will be live in summer 2008.

There is a lack of clarity about the role of Environment Officers in providing advice to businesses

- 50 Advice and guidance to businesses provided by front-line officers can play an important part of on-site inspections. We found that businesses generally value the assistance that is provided by face-to-face dealings with the EA's inspectorate, but there is also concern that this is dependent on the knowledge and experience of individual officers, which can be inconsistent both within and across geographical areas and industry sectors. Environment Officers themselves are unclear about whether they should offer advice to businesses on how to comply. Some are happy to take a proactive approach and believe it is part of their role to advise. Others, however, feel uneasy with this role, considering that it crosses the line into consultancy, and are worried that the EA might be held liable for inadequate advice. Businesses expressed frustration that the EA is not more proactive in advising on compliance, and reported that written and verbal guidance can be ambiguous in terms of the actions needed in order to ensure compliance. Some front-line staff told us that they would welcome further training to develop their operational and knowledge competencies, in their goal to support business compliance and to tackle non-compliant sites.

There has in the past been no overarching strategy for the provision of advice and guidance

- 51 The EA has some strong initiatives relating to the provision of advice and guidance, including NetRegs and the NCCC. However each initiative has been developed in isolation rather than being part of a strategy that brings them together into a coherent whole, to ensure appropriate coverage and targeting by size of firm, sector and regime. This can potentially lead to overlaps between advice and guidance, or, of more concern, gaps in provision. A further problem, particularly in relation to NetRegs, is that it has been funded through a series of short-term grants without any long-term commitment to funding.
- 52 The EA is now developing a strategy in this area and we would support further work on this in order to put the provision of advice and guidance on a firmer footing. We would expect a strategy to help ensure that advice and guidance is both accessible to and accessed by business. As a result the EA should be better placed to use advice and guidance as a regulatory tool, and to reduce its reliance on inspections to ensure compliance.

Data requests

Hampton principle

“Businesses should not have to give unnecessary information or give the same piece of information twice.”

Key findings

- **The EA has invested time and resources into producing well-designed forms**
- **Integrated Regulation is a major step forward in e-enabling business interaction with the EA**
- **The EA could make more effective use of the data that it collects from businesses and it should consider whether it can reduce data requirements**
- **Businesses are required to submit data in formats set by the EA, including in hard copy**

Background

53 The EA requires data from businesses for four reasons:

- regulatory activity, including permit-setting and review, and compliance assessment;
- legal requirements on the EA and operators to collect information;
- to promote public confidence; and
- to inform publications such *State of the Environment* and *Spotlight*.

54 Permits are issued to allow companies to carry out processes that have the potential to pollute the environment. The term 'permit' covers all types of regulatory controls, including licences, consents, registrations, enforcement notices and directly applicable legislation.

55 Permits typically set limits to control the level of pollutants that can be released from a particular site and may require the

operator to carry out processes in accordance with stated conditions and to provide related monitoring data. The main permitting regimes operated by the EA of relevance to this review are summarised in Appendix 1. Appendix 2 contains numbers and types of permits and numbers of regulated sites.

56 The EA has a document management system and procedures that aim to ensure all forms have a purpose that will be clearly understood, accompanied with supporting guidance that sets out clearly the relevant requirements and their purpose. As part of this work:

- of about 350 forms and guidance documents, 94 have been removed leaving a total of 250, counting both English and Welsh versions;
- all forms have been given a date for future review; and
- the length of forms has been cut so that now 75% are now eight pages or less.

Review findings

The EA has invested time and resources into producing well-designed forms

- 57** The review team saw some exemplary forms and is impressed by the EA's work in this area, recognising that the resources and thought the EA has put into the design and rationalisation of forms has had real positive impact. Taking a more proportionate approach to regulating low-risk activities (see paragraph 15) has also removed some of the burdens of data returns for businesses.

Integrated Regulation is a major step forward in e-enabling business interaction with the EA

- 58** Integrated Regulation is an IT project to bring all of the EA's regulatory activities online, while continuing to support the option of paper and telephone applications. Integrated Regulation is being developed so that new regulations can be incorporated, and ultimately to enable unified regulation and charging for whole sites rather than for individual permits. The aim is to simplify and improve customer service by:
- developing an on-line one-stop shop for all permit applications, variations and revocations;
 - providing downloadable forms that are pre-populated where possible;
 - enabling e-payments; and
 - using automated checks and instant validation.
- 59** This will give the EA access to real-time data which will also assist in planning risk-based inspection activity. Integrated regulation is a major step forward in e-enabling business interaction with the EA and the review team believes this has the potential to make a significant improvement for business when it goes live in early 2008.

The EA could make more effective use of the data that it collects from businesses and it should consider whether it can reduce data requirements

- 60** Some businesses told us that they feel that data requirements imposed by the EA are onerous. In part, these concerns relate to requirements to collect data, and in part the concern is about requirements to submit data. Some businesses explained that they are required to collect excessive amounts of data annually, as well as submit some of this to the EA. Many businesses said that, in addition to concerns about the costs of collecting data, they do not understand how the EA uses the information they return or whether it is used at all. They gave examples where particular breaches of emissions limits had not been followed up by the EA for a number of months after returns had been made and where surveys or questionnaires were sent requesting information that had already been submitted. There were also examples of inconsistencies in the data requirements of similar operations in different parts of the country, often resulting from differing permit conditions.
- 61** Some front-line staff acknowledged that they do not have enough time to interrogate all the data available and other staff within the EA questioned whether, when balanced against the cost to business of generating, monitoring, recording and returning data, the EA uses the information to its fullest effect. We recognise that some data requirements flow from regulations and that much of it is used. However it is unclear whether the EA gathers information in the most cost-effective way: for example, sampling may enable the EA to monitor trends instead of using returns from every regulated site.
- 62** The review team also believes that the data generated by the NCCC, regarding the

nature and source of enquiries, is not being fully utilised. The logging of calls is generally restricted to broad categories for NCCC management and staffing purposes. We welcome the EA's proposals to develop its systems for collating and analysing the nature of the calls it receives so they can be better utilised as a source of intelligence to inform planning and policy decisions.

Businesses are required to submit data in formats set by the EA, including in hard copy

- 63** Another issue for businesses is the format of data returns. In many instances information is collected electronically by business but has to be returned to the EA

in hard copy. Even where businesses agree that they use the data as part of their business management processes, the EA requires returns to be made in a format that suits their requirements rather than the firms', and it was not clear to us that business were able to access advice on exactly how to collect data before they started doing so. These issues place an unnecessary burden and are a source of irritation for business. We are aware that the Environmental Permitting Programme will allow for simpler requirements and that the EA is moving towards more electronic reporting. We hope that this will help to address the concerns we heard from business.

Inspections

Hampton principle

“No inspection should take place without a reason.”

Key findings

- **Businesses’ views of the quality and impact of inspections varies, and depends largely on the competence and flexibility of individual inspectors**
- **There is a move towards fewer inspections but there is a lack of evidence about the effectiveness of these interventions in achieving regulatory outcomes or reducing burdens**
- **The charging regime does not support the EA maximising regulatory outcomes.**

Background

64 The EA’s approach to inspections is based on a number of tools, including:

- Assessment methodology – this provides guidance for Environment Officers (the front-line inspection staff) on how to undertake compliance assessment.
- Compliance classification scheme (CCS) – this classifies non-compliance with a permit condition according to its *potential* severity. The different categories of non-compliance are:
 - Category 1 – likely to lead to a major pollution event
 - Category 2 – likely to lead to significant pollution
 - Category 3 – likely to lead to some (minor) pollution
 - Category 4 – no or negligible impact

Actual environmental impact is classified using a complementary scale. The aim is to establish a consistent and transparent means of classification across the various regulatory regimes.

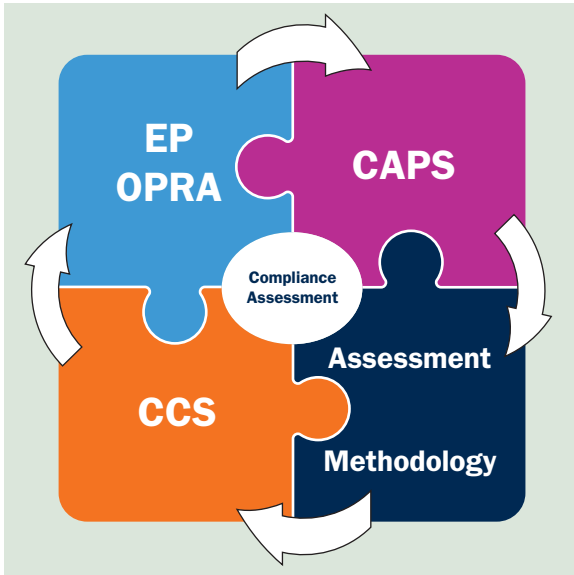
- EP OPRA – see the box on page 16 for a description of OPRA. EP OPRA is the tool as applied within the Environmental Permitting regimes.

- Compliance assessment plans (CAPs) – these set out national, sector and site-specific objectives along with the EA resource assigned to each of the generic compliance activities. Sector CAPs contain objectives relevant for a particular industry sector and set out the proportion of effort that should be directed to each of five generic compliance activities (such as inspections or audits). Some sites or installations will also have a bespoke CAP incorporating more detailed local considerations, but smaller low-risk sites are less likely to have a specific CAP.

65 The EA’s compliance assessment model shows how these tools combine and inform each other (see figure 1 overleaf).

66 The EA also has a ‘Compliance-Enforcement model’ (see Figure 2) which describes four types of business – ‘top performers’, ‘generally compliant’, ‘generally non-compliant’ and ‘criminals’. The model indicates the relative level of regulatory effort required for each and describes the EA’s overall approach, for instance for generally compliant businesses they intend to “press them to take greater ownership”. EA staff that we met told us that they spend most of their time working with businesses which are either generally compliant or generally non-compliant. There

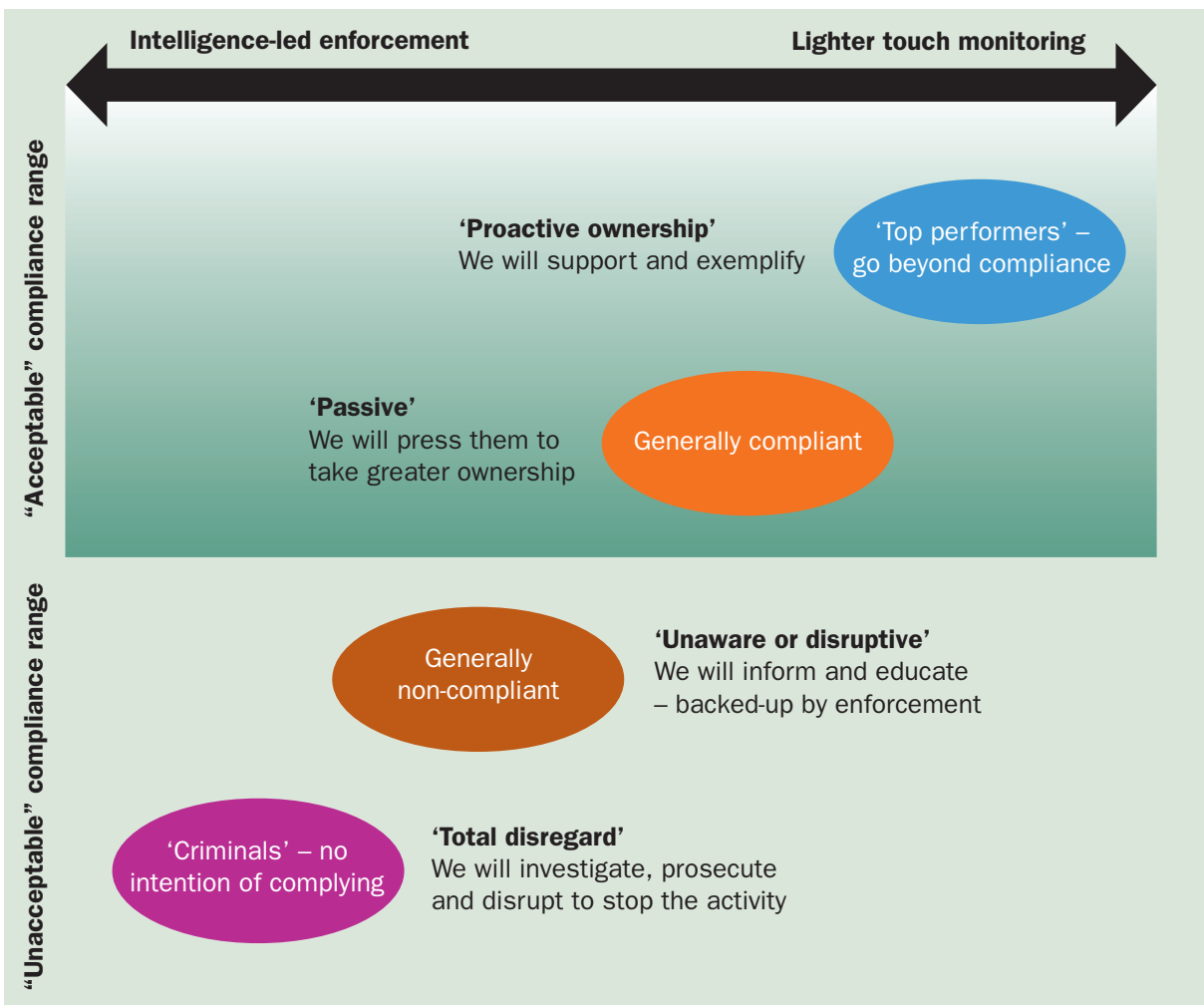
Figure 1: Compliance assessment approach



are also some dedicated ‘environmental crime’ teams, focusing on illegal and criminal activity.

- 67 The EA has moved away from targets based on numbers of inspections for their Environment Officers to a system of targets based on company OPRA scores. This approach is more focused on outcomes, allowing a range of interventions in addition to standard inspections. There is an increasing emphasis on the use of audits in place of some inspections.

Figure 2: Compliance-enforcement model



Review findings

Businesses' views of the quality and impact of inspections varies, and depends largely on the competence and flexibility of individual inspectors

- 68** The business view of the quality and impact of inspections varies amongst those businesses we interviewed. Some have a very positive view of their local EA staff, whilst others are more critical. Much seems to depend on the competence and confidence of the individual inspector, their understanding of the sector or business and the extent to which officers use their discretion to respond to specific business circumstances.
- 69** There was praise from businesses for some competent and confident enforcement staff who focus their efforts on the key environmental outcomes whilst adopting a pragmatic interpretation of the legislation and requirements. However, a number of businesses told us that they do not feel the EA really takes into consideration the commercial impact of its operations. In some cases the staff members are relatively inexperienced and appear to lack the confidence to exercise the balanced risk-based judgements required. As a result, the EA sometimes appears to businesses to impose bureaucratic burdens which have little visible connection to environmental outcomes. Some businesses also commented on the turnover of EA staff, with newer inspectors lacking knowledge of industry sectors, as well as a lack of a consistent relationship between the EA and the business.
- 70** The view we heard expressed at all levels within the EA is that consistency is important and that the organisation focuses on delivering this through a series of management systems and guidance, but that constraints imposed by its legislative inheritance can prevent staff using their discretion. The review team appreciates the importance of consistency in applying regulation, and that businesses expect a level playing field. Businesses would, however, appreciate a regime that has the flexibility to better recognise the circumstances of individual operators and their likely impact on the environment.
- 71** The review team is aware of the process in place that enables front-line staff to seek advice from policy teams and to challenge, check and clarify guidance. This introduces flexibility to respond to specific circumstances. However, following discussions with operational staff we are not confident that this process is universally understood or used by them. The result for business can be rigid enforcement of the guidance whereas flexibility and discretion at local level is appreciated by business. The review team heard from businesses and Environment Officers how flexibility can be achieved within the EA's working practices but feedback from business does not suggest that this is common EA practice; much depends on individuals rather than being part of the EA's culture.
- 72** We are also aware that the EA is rolling out a Technical Development Framework for its field staff, with a greater emphasis on communication and other personal skills needed to be a modern regulator. The review team hopes that the framework and associated training programmes will give staff greater confidence and empower them to take decisions locally, whilst focusing on the EA's key priorities in terms of environmental outcomes.
- 73** The review team believes that the EA might further reduce the burden of regulation on larger, multi-site businesses if it was to introduce an approach similar to the 'single point of contact' or 'lead authority'

principles used by some other regulators. We feel that this would assist the EA in supporting businesses and taking a proportionate approach to regulation.

There is a move towards fewer inspections but there is a lack of evidence about the effectiveness of these interventions in achieving regulatory outcomes or reducing burdens

74 The EA has traditionally relied on inspection to monitor and drive compliance. There is a move within the EA towards fewer inspections, with the aim of reducing the burden of inspection on businesses. There is some evidence of this direction of travel in inspections data provided by the EA, most notably in the numbers of waste management licensing inspections, however absolute levels of inspections remain high relative to other regulators. The following charts show numbers of inspections in the key regimes since 2001/02 (the figures are shown on two separate charts for ease of reading, due to the differing scales of the data).

75 The review team found no evidence that the EA has examined the effectiveness of its interventions to determine which are most effective in achieving compliance. There is nothing to demonstrate that the frequency of inspections is linked to the delivery of particular outcomes: for example one of the businesses that the team visited is the subject of inspections every six weeks but its compliance does not appear to have improved markedly. We also looked for evidence of the EA encouraging and engaging in multi-agency audits and inspections of sites liable to inspection by different agencies. Whilst there is information to indicate that this is in the consciousness of the EA, it does not appear to be an endemic part of the inspection process. In the interests of effectiveness, impact and minimising burdens we feel this is an issue for the EA to review and explore.

76 The review team saw some evidence of innovation amongst Environment Officers. We noted, for example, the initiative to hand out ‘bacon butties’ to encourage

Figure 3: Numbers of inspections: discharges to water and waste management licensing

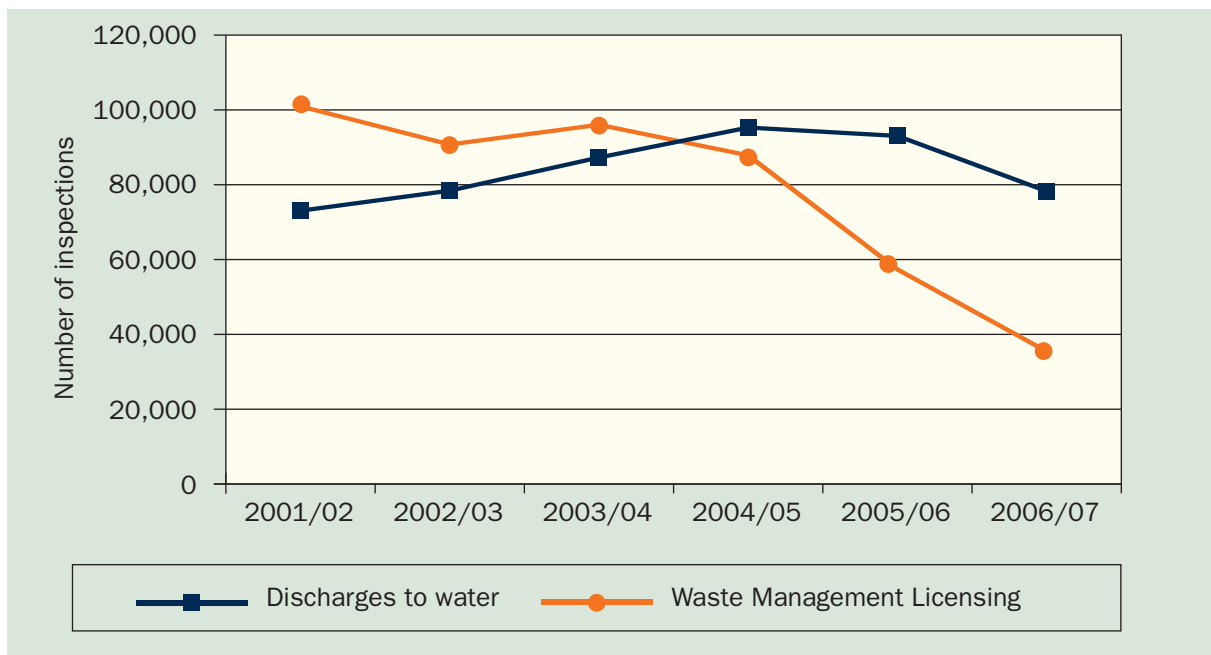
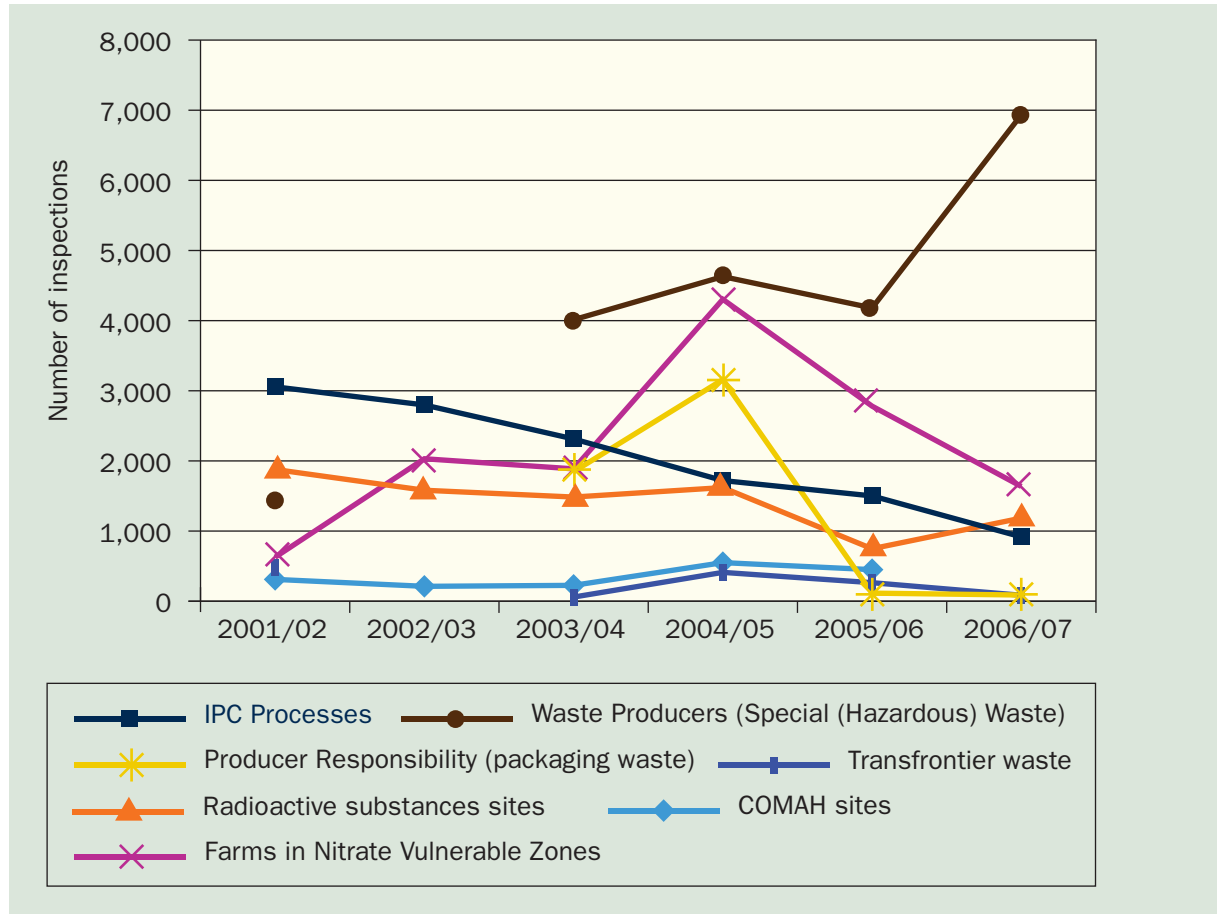


Figure 4: Numbers of inspections: other regimes



those working in the construction industry to come and receive information about waste management issues – this was a targeted campaign to reduce waste at source within that particular industry. The EA adjusted their approach to suit the audience, recognising that many construction workers did not speak or read much English and that information leaflets would not have been effective. We were told that this led to a significant reduction in the unlawful dumping of waste in a particular part of the country, and had been a more effective intervention than traditional approaches. The review team is not convinced, however, that there are processes in place to ensure that such innovative ideas can be shared effectively

between and within regions to make the most of the good practice that exists within the organisation.

The charging regime does not support the EA in maximising regulatory outcomes

77 The charging regime means that the EA has to use the funds it collects from fee-payers in providing services, such as inspection, to those businesses. This incentivises the EA to ensure it provides a service to these businesses in return for the fees they pay, even where it might be more effective in terms of achieving environmental outcomes for the EA to use those funds in other ways: for example, by investing in innovative approaches which tackle

problems at root (such as that discussed at paragraph 76 above), or enforcement action against those firms which deliberately operate outside the law. We heard significant concerns from businesses that these constraints mean the EA focuses a large proportion of its energy on those businesses which are largely legitimate in their operations. Some fee-paying businesses said that they would prefer it if the EA could use fee income in a more flexible way than at present, and we heard a similar message from a number of front-line staff. This appears to be an area where the EA would benefit from more flexibility in relation to fee income.

Sanctions

Hampton & Macrory principles

“The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions.”

“Regulators should be transparent in the way in which they apply and determine administrative penalties.”

“Regulators should avoid perverse incentives that might influence the choice of sanctioning response.”

“Regulators should follow up enforcement actions where appropriate.”

Key findings

- **Businesses we spoke to agreed that the EA uses its prosecution powers in a proportionate way but that its sanctions are not always effective**
- **There is support for the EA in having access to the range of powers proposed in the Regulatory Enforcement and Sanctions Bill**

Background

78 The powers available to the EA vary across the regulatory regimes, but include:

- enforcement notices and works notices (where contravention can be prevented or needs to be remedied);
- prohibition notices (where there is an imminent risk of serious environmental damage);
- suspension or revocation of environmental licences;
- variation of licence conditions;
- injunctions; and
- the carrying out of remedial works.

79 The EA also makes use of tools and legislation that are not specific to the regulatory regimes where these powers offer appropriate outcomes, for example: prosecution for conspiracy or fraud; applying to the Courts for removal of driving licences under the Powers of Criminal

Courts (Sentencing) Act 2000; or securing assets under the Proceeds of Crime Act.

80 The EA has a published Enforcement and Prosecution Policy, which sets out the general principles to be followed when taking enforcement action and considering prosecution. It is used in conjunction with more detailed specific guidance which is set out on a regime by regime basis.

81 A National Enforcement Steering Group comprises national EA policy leads and representatives of the 23 Area Managers and is chaired by the Deputy Director of Operations. The Group’s purpose is to advise on enforcement priorities and to help drive consistency of enforcement by maintaining a strategic overview of environmental crime nationally. At area level, Enforcement Panels provide a mechanism to deliver greater consistency. They also monitor compliance with the EA’s Enforcement and Prosecution Policy and

help to improve sharing of information and co-operation.

- 82** The EA publishes an annual environmental performance report, *Spotlight on Business*¹⁶ which includes a breakdown by industry sector of the numbers of serious breaches of regulatory controls and prosecutions as well as case studies of some of the good performers.
- 83** The *Spotlight 2006* report sets out:
- of the 10 businesses with the highest cumulative fines in 2006, 5 were from the water industry and 4 handled waste;
 - the annual total of fines from prosecutions was £3.5 million;
 - 120 of the 158 companies fined £5,000 or more were SMEs;
 - 380 individuals were prosecuted; and
 - six directors were individually fined more than £5,000, with two custodial sentences imposed.
- 84** In 2006 the EA pursued approximately 700 prosecutions and issued 400 cautions and 500 notices. Data provided by the EA show no discernible upward or downward trend in these figures since 2000. In 2006-07 approximately 24,600 warning letters were issued.

Review findings

Businesses we spoke to agreed that the EA uses its prosecution powers in a proportionate way but that its sanctions are not always effective

- 85** There was general agreement amongst businesses that the EA prosecutes in a proportionate way. Those trade associations with an overview of their industry suggested that prosecutions had been justified. There is recognition, from

both EA staff and stakeholders, that fines imposed by the courts are often too small to act as a real deterrent.

- 86** Some businesses commented on the number of warning letters that the EA issues, with some suggesting that they receive letters so frequently that they don't pay much attention to them.

There is support for the EA in having access to the range of powers proposed in the Regulatory Enforcement and Sanctions Bill

- 87** There is also general agreement that the EA's sanctioning powers are not sufficiently flexible. Some businesses believe that administrative sanctions would be useful to the EA, for example in circumstances where there is a technical breach of permit conditions and prosecution would not be a proportionate response. We recognise that any extension of administrative sanctions would need to be coupled with a revision to Court sentencing guidelines to ensure that the threat of a criminal prosecution did not become a lesser penalty than a civil sanction.

¹⁶ *Spotlight on business: Environmental performance in 2006*, Environment Agency, July 2007

Focus on Outcomes

Hampton principle

“Regulators should measure outcomes and not just outputs.”

Key findings

- At a corporate level the EA is committed to measuring environmental outcomes and focusing its activities to achieve those outcomes
- The EA should clarify how its day-to-day regulatory activities contribute towards achieving its desired outcomes
- There is uncertainty amongst staff about how to deal with some types of complaint

Background

88 The EA has identified nine ‘environmental goals’ and these provide a consistent framework throughout three key corporate documents:

- An *Environmental Vision*¹⁷ was published in 2000 and describes the EA’s long-term objectives under the overall vision of “a healthy, rich and diverse environment in England and Wales, for present and future generations”. Short-, medium- and long-term milestones are laid out as far ahead as 2020;
- The current corporate strategy, *Creating a Better Place*¹⁸ describes how the EA will work during the period 2006-2011 towards the longer-term vision; and
- The current corporate plan¹⁹ covers the period 2006-2009. It details specific outputs, with year-on-year targets. This is cascaded down to directorate plans.

89 Progress towards these goals is monitored by the Board on a quarterly basis using a balanced scorecard approach. Below the top-level Corporate Scorecard there are more detailed scorecards at directorate level.

90 Performance information is published in the Annual Report and Accounts and in the annual *Spotlight on Business*²⁰ report on enforcement activity. The Corporate Scorecard is also available on the EA’s website.

91 Environmental outcomes from the corporate strategy and evolving national priorities are translated on an annual basis into detailed levels of work to be carried out by operational staff. These service levels are incorporated into, and partially delivered through compliance assessment plans (see page 29). The EA reported that it is reviewing the service levels to make them more outcome-focused and will continue to develop them. The EA intends these more

¹⁷ *An Environmental Vision: The Environment Agency’s contribution to Sustainable Development*, Environment Agency

¹⁸ *Creating a better place: Corporate strategy 2006–2011*, Environment Agency, April 2006

¹⁹ *Environment Agency Corporate Plan 2006-09: Translating strategy into action*, Environment Agency

²⁰ *Spotlight on business: Environmental performance in 2006*, Environment Agency, July 2007

outcome-focused service levels to be in place for April 2008, and that they will be monitored at area, regional and national level.

- 92** In collaboration with industry, the EA has also devised Sector Plans. These outline regulatory regimes, voluntary agreements and other initiatives; all of which are used in combination towards achieving overarching outcomes for the given sector. Sector plans aim to go beyond conventional regulation and help industry with their long-term environmental planning by looking at the issues facing each particular sector from a wider, more strategic perspective.

Review findings

At a corporate level the EA is committed to measuring environmental outcomes and focusing its activities to achieve those outcomes

- 93** The EA works within a performance management framework that includes a set of key performance indicators brought together in a 'corporate scorecard'. The targets cover 17 key areas, including the nine overarching environmental goals that are common to all the corporate documents, and are underpinned by robust data. The scorecard is reviewed at every board meeting. Indicators include a number of relevance to the Hampton and better regulation agendas, including:
- reducing the administrative burden placed on business;
 - delivering permits more quickly;
 - identifying and reducing illegal waste sites; and
 - being successful in taking action against those who damage the environment.
- 94** The corporate scorecard demonstrates a good level of control by the EA over its internal and external activities, and the

extent to which outputs and outcomes are being successfully achieved.

The EA should clarify how its day-to-day regulatory activities contribute towards achieving its desired outcomes

- 95** The review team recognises that the EA is clear about the environmental outcomes that it is trying to achieve. We are concerned, however, that the EA does not appear to be able to identify a direct causal link between its day-to-day activities and their effect on those desired outcomes; it is not clear whether it is prioritising its resources on those sectors, emissions or activities which are most damaging to the environment. We recognise that this reflects the nature of the EA's work in implementing Directives through licensing and permitting; however we are concerned that implementation, rather than environmental benefits can be seen as an outcome in itself.
- 96** In addition, the regulatory framework does not always appear to reflect the context in which businesses operate. For example the review team talked to a number of businesses engaged in some form of recycling who are frustrated that they are struggling to comply with regulations without out any acknowledgement from the EA that the very basis of their activities is environmentally beneficial.
- ### **There is uncertainty amongst staff about how to deal with some types of complaint**
- 97** The EA is striving for a strong degree of consistency in its enforcement activities, which will be further strengthened by the introduction of standard permits and central permitting teams. However, the system does not appear to be as consistent when applied to external factors; for example some Environment Officers are unclear about how to deal with complaints from communities about nuisance caused

by noise and particularly odour. Some Environment Officers feel that responding to such complaints can place excessive demands on the EA's resources. We had comments from a number of staff, particularly those who regulate facilities which give rise to odour and noise, that although these issues are of public concern, they find it difficult to define the real environmental harm being caused. There was also a feeling amongst some staff that more affluent communities are more likely to complain about such issues.

98 The review team welcomes the EA's commitment to review its guidance for staff in how to deal with issues of this nature. We hope this will result in a clear policy that informs enforcement activity in this area, so that the EA's approach is clear to both staff and stakeholders.

Appendix 1: Glossary

Abstraction

Taking water from a source of supply (surface or groundwater). *See also Water Abstraction and Discharge below.*

COMAH

Control of Major Accident Hazards regulations.

Compliance Assessment Plan (CAP)

Used by EA to ensure that within a defined period compliance is checked against all requirements of the permit and other relevant regulatory requirements. A CAP can be developed at site- or sector-level and will identify the level of resources to be assigned to the various compliance assessment activities.

Compliance classification scheme (CCS)

Used to classify non-compliance with permit conditions in accordance with the potential impact on the environment.

Crystal Mark

An award given to official documents for clarity and use of plain English.

Discharge

The release of substances (eg water, treated sewage effluent, etc.) into surface waters or ground waters. *See also Water Abstraction and Discharge below.*

Environmental Permitting Programme (EPP)

A multi-phased initiative that, when complete, will provide a common permitting regime for operators; bringing together waste and PPC regulation, whilst simplifying supporting documentation and information systems into one joined-up risk-based regime. It also provides a platform for the integration of future EU Directives, and further integration of permitting regimes.

Groundwater

Water that is contained within underground rock formations.

Hazardous waste

Waste that is dangerous to people, the environment or animals and listed as hazardous under the Hazardous Waste Regulations 2005.

Integrated Regulation Programme

An IT system that has been developed by the EA to support modern regulation and is a common suite of IT services through which charging and permitting will be administered.

National Customer Contact Centre (NCCC)

A call centre, which provides a single telephone point of contact and advice for business and public enquiries.

NetRegs

A website developed and administered by the EA in partnership with the other UK environmental regulators (SEPA in Scotland and the Environment and Heritage Service in Northern Ireland) and designed specifically for SMEs to provide advice, guidance and to help them to understand the complex environmental regulations that may affect them.

Operator and Pollution Risk Appraisal (OPRA)

A multi-attribute risk assessment and risk profiling tool used by EA to determine the environmental hazards associated with a site and how well they are being managed. OPRA scores are based on an assessment of a site's emissions, location, complexity and recent operator performance.

Permit (also Licence and Registration)

A documented set of criteria issued by EA or set down in regulations that require a site or activity to operate in a particular way.

Pollution Inventory

An inventory of information on the release of pollutants and the transfer of waste off-site from businesses regulated by EA.

Pollution Prevention and Control (PPC)

The Pollution Prevention and Control (PPC) Regulations 2000 are the mechanism by which the EA implements the European Integrated Pollution Prevention and Control Directive and other related Directives. They replaced the previous Integrated Pollution Control and Local Air Pollution Control regimes. In general terms, PPC regulates businesses carrying out industrial; waste management activities; intensive farming; activities involving solvents and businesses directly associated with sites carrying out these processes.

Regulatory Scrutiny Panel

The EA's internal challenge panel which performs a gateway role in legislative and policy development.

Site of Special Scientific Interest (SSSI)

An area given a statutory designation by English Nature or the Countryside Council for Wales because of its nature conservation value.

Small- to Medium-Sized Enterprise (SME)

Defined by the European Commission as independent enterprises that have fewer than 250 employees, and an annual turnover not exceeding £34 million or a balance-sheet total not exceeding £29 million (this definition came into force on 1 January 2005).

Spotlight on Business

An annual publication detailing the environmental performance of regulated businesses. As well as high-level outcomes information, such as overall levels of greenhouse gas emissions from regulated businesses, the report names both good and poor performers.

State of the Environment report

A five-yearly report published to give an account of the state of the environment.

Surface water

This is a general term used to describe all water features such as rivers, streams, springs, ponds and lakes.

Waste Electrical and Electronic Equipment (WEEE) Directive

One of a series of 'producer responsibility' Directives that makes EU producers of new equipment pay for the recycling and/or safe treatment and disposal of the products they put on the market when they eventually come to be thrown away.

Waste Management Licensing (WML)

Most waste is subject to waste legislation and handling it requires an authorisation. The EA regulates the treatment and disposal of waste through a system of waste management licensing and through PPC permits for the largest and most complex waste operations.

Water Abstraction and Discharge

The EA is responsible for managing the water resources in England and Wales. In most circumstances, an abstraction licence is required to remove or abstract water from a surface source (eg river, stream or canal) or from an underground source and take more than 20 cubic metres (approximately 4,400 gallons) a day. Licences are issued for a time-limited period, normally 12 years, with a presumption of renewal.

It is an offence to cause or knowingly permit trade and sewage effluent to enter directly into surface waters or groundwaters without prior written authorisation. This can take the form of:

- a discharge consent;
- a groundwater authorisation; or
- an Integrated Pollution Control (IPC) authorisation or Pollution Prevention Control (PPC) permit.

Appendix 2: Numbers of permits and regulated sites

Table 1: Number of permits in force across regimes

Type of permit	Number of permits in force as of September 2007
Pollution Prevention and Control (PPC) ⁷	2,900 (700 applications in process)
Integrated Pollution Control (IPC)	60
Radioactive Substances	3,550
Waste Management Licences	8,150
Waste Management Licences – exemptions – all types	81,000 chargeable 210,000 total
Groundwater Authorisations	8,300
Water Resources Act Discharge Consents	123,000
Water Resources Abstraction Licences	20,200
Water Resources Impounding Licences	2,500
Water Industry Act Referrals	700

Table 2: Number of regulated sites

Regime	Number of regulated sites
Emissions Trading Scheme	850 reducing to 750 from 1 January 2008
Control of Major Accident Hazards (COMAH)	Approx. 1,000
Packaging Regulations	450 companies and 22 multi-company schemes (4600 companies in the schemes)
WEEE Treatment	35 compliance scheme with 3500 companies in the schemes (expected number of companies to double)
Hazardous Waste	206,000
Carriers and Brokers	78,000
Agricultural Exemption	410,000 simple waste exemptions 70,000 complex waste exemptions 500 waste collectors 6,000 road planning forms
Polychlorinated biphenyls (PCBs)	28,000 holdings across 61 registrants

Appendix 3: Review team membership

Ron Gainsford

Ron joined the Trading Standards Institute as its Chief Executive in February 2002 after spending some years with LACORS leading on trading standards affairs. His professional background is in trading standards and local government with broad experience in working in a variety of local authorities and in national and international regulatory consumer affairs. He is well versed in European and international collaboration and has represented UK interests on several European enforcement and influencing groups involving consumer protection counterparts and other professionals from member states, EU institutions and other overseas agencies.

Peter Gray

Peter is a Director at the National Audit Office. Since 2005 he has been responsible for conducting value for money studies into the work of the Department for Business, Enterprise and Regulatory Reform and its related bodies (previously the DTI). He has previously held a range of posts at the National Audit Office, including responsibility for scrutinising the performance of the immigration and criminal justice systems.

Jitinder Kohli

Jitinder is Chief Executive of the Better Regulation Executive, which is part of the Department for Business Enterprise and Regulatory Reform, and works across government to reduce and remove unnecessary regulation for the public, private and voluntary sectors. He was previously Director of the Home Office's Active Communities Directorate and he has also worked for the Treasury, DTI and Cabinet Office.

Eve Salomon

Eve Salomon is a freelance legal and policy consultant, specialising in broadcasting-related matters both domestically and internationally. She is also a member of the Better Regulation Commission, the Gambling Commission and a Commissioner for the Press Complaints Commission.

Appendix 4: Conclusions of the Hampton and Macrory reviews

Hampton principles of inspection and enforcement

- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most
- No inspection should take place without a reason
- Regulators should provide authoritative, accessible advice easily and cheaply
- All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when they are being drafted
- Businesses should not have to give unnecessary information, nor give the same piece of information twice
- The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions
- Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection
- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take
- Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work
- When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed

Source: Hampton Report, Box E2 page 7

Macrory's principles and characteristics of an appropriate sanctioning regime

A sanction should:

1. Aim to change the behaviour of the offender;
2. Aim to eliminate any financial gain or benefit from non-compliance;
3. Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
4. Be proportionate to the nature of the offence and the harm caused;
5. Aim to restore the harm caused by regulatory non-compliance, where appropriate; and
6. Aim to deter future non-compliance.

Regulators should:

1. Publish an enforcement policy;
2. Measure outcomes not just outputs;
3. Justify their choice of enforcement actions year on year to stakeholders, Ministers and Parliament;
4. Follow up enforcement actions where appropriate;
5. Enforce in a transparent manner;
6. Be transparent in the way in which they apply and determine administrative penalties; and
7. Avoid perverse incentives that might influence the choice of sanctioning response.

Source: Macrory Report, Box E1 page 10

Appendix 5: Review scope and methodology

The EA carries out regulation and inspections in a wide number of areas through a complex range of regulatory regimes. This review focused on those aspects of the EA's activities where we considered that its actions have most impact on businesses. These areas included the pollution prevention and control, waste management licensing, water abstraction and water discharge regimes.

The following areas were excluded from the scope of the review as, in comparison with other activities, they have no or relatively low regulatory impact on business:

- management of flood risk;
- recreation;
- boat and rod licensing/fishing permits; and
- reservoir safety.

Our methods included:

- interviews with a wide range of EA staff including senior managers;
- interviews with other stakeholders including Defra and a wide range of trade organisations and individual businesses;
- focus groups of EA policy officials, front-line staff and businesses;
- observational visits including inspections; and
- document review – as well as looking at the EA's high-level strategies, corporate documents and website, we considered a range of more detailed policy and procedural documents, published research, individual pieces of legislation, guidance documents, application forms, etc.

The review process is described in *Hampton Implementation Reviews: Guidance for Review Teams*²¹. It is not the same as a full value for

money audit of economy, efficiency and effectiveness and the review team's conclusions are both evidence- and judgement-based. These judgements, however, have been made drawing on a range of evidence from different sources, including those described above. Judgements have not been based on evidence from a single source – the review team has sought to bring together evidence from a number of different businesses or organisations, and from EA front-line staff, policy officials and senior managers.

The organisations that we spoke to included:

- Association of Electricity Producers
- British Cement Association
- British Metals Recycling Association
- Confederation of British Industry
- Confederation of Paper Industries
- Department for Environment, Food and Rural Affairs (Defra)
- Environmental Services Association
- Federation of Small Businesses
- National Farmers' Union
- Ofwat
- UK Petroleum Industry Association

We are grateful to these organisations for their input, and also to the individual businesses that we spoke to, who gave generously of their time.

The following table shows the industry sectors represented by the trade organisations and businesses that we interviewed or visited during the review, together with the principal EA regulatory regimes within which they fall.

²¹ *Hampton Implementation Reviews: Guidance for Review Teams*, National Audit Office and Better Regulation Executive, May 2007

Table 3: Industry sectors contributing to the review

Industry sector	Principal EA regulatory regime(s)
Agriculture	Agricultural waste PPC Hazardous waste Water Framework Directive/consents
Cement	PPC Waste management licensing
Chemicals	PPC Hazardous waste Water abstraction Water discharges
Electricity	PPC Hazardous waste Waste management licensing
Metal recycling	PPC
Paper	PPC
Petroleum	PPC Hazardous waste Waste management licensing
Waste management	28,000 holdings across 61 registrants
Water	PPC Water Framework Directive/consents
Business organisations (CBI and FSB)	Various

Better Regulation Executive
Department for Business, Enterprise and Regulatory Reform
3rd Floor
1 Victoria Street
London SW1H 0ET

Website: www.berr.gov.uk/bre

Publication date: March 2008

URN: 08/737

© Crown copyright 2008

The text in this document may be reproduced free of charge in any format or media without requiring specific permission. This is subject to material not being used in a derogatory manner or in a misleading context. The source of the material must be acknowledged as Crown copyright and the title of the document must be included when being reproduced as part of another publication or service.