

SELF-REGULATION

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A Vision

A VISION FOR THE ENVIRONMENTAL PERFORMANCE OF AUSTRALIAN business and manufacturing industry, by the turn of the century, is one where industry recognises and manages environmental responsibilities in exactly the same manner as its other key fiduciary, economic, legal, human relations and social responsibilities. As a matter of course all key decisions will be examined from an environmental perspective. Each decision will be required to meet robust and rigidly enforced internal environmental performance criteria. No business actions will be implemented unless they fully meet all of the environmental determinants and comply with short and long-term environmental risk criteria.

Every business decision will be made on the optimal use or allocation of environmental as well as financial and capital resources. The full implications of each decision will be well understood by all decision makers and their line and advisory staff. Decisions and action will not occur until these implications are clear. The environmental ramifications of:

- resource use, such as raw materials, energy, environmental media;
- manufacturing processes;
- any unavoidable remaining waste generation;
- product transport, storage and use;
- ultimate product and waste disposal;
- unavoidable land and habitat disturbance;

and other critical issues will be considered automatically.

All of the environmental data, models and knowledge of systems required will have been established, mostly through cooperation between industry, government agencies and scientific experts. The fierce debates and disagreements on environmental values and the need to account properly for environmental resources and their use, which characterised the early 1990s, will be considered as irrelevant ancient history. Accounting practice will routinely incorporate environmental resource accounting and valuations. Market pricing will fully embrace environmental values, locally, nationally and globally. Most of those involved will have no personal memory of when this was

not the case. In fact, the issues will be so inextricably intertwined that it will be not be possible to consider them as other than one. Attitudes in business and the community will be fundamentally different.

By the turn of the century, environmental knowledge will extend from the start of the supply chain to the end of the chain including the use and final disposal of the product and beyond. All supply, service and purchase contracts will feature environmental performance obligations and guarantees as prime contractual conditions. Market imperatives will automatically enforce optimal environmental performance through shareholder, debtholder, supplier, customer and community requirements. Failure to perform environmentally will result in certain disqualification from continuing to do business. Customers, suppliers, financiers, insurers and industry associations will impose sanctions through the marketplace. Environmental crime will be seen as one of the more odious criminal activities against the whole community. Those found guilty of such crimes will be subject to criticism and vilification as well as substantial monetary and economic penalties.

In the first decade of the next millennium, the environmental regulatory effort will have charged. Safety net regulatory controls will be in place but will be rarely utilised. Legal sanctions will be much more dramatic than now. A key regulatory focus will be on understanding the longer-term global environmental issues, where these involve continuing uncertainties. Regulators will assist the community and industry to adjust to the remaining global concerns and will be very involved in ensuring overall industry competitiveness. Supporting and supervising industry efforts to maintain environmental performance will be another major focus. The effort will encompass developing and maintaining the environmental data sets required by industry to make informed decisions. The data will include:

- marine, terrestrial and atmospheric environmental systems;
- habitats, flora and fauna;
- biogeographical regional considerations and collective implications;
- environmental impact assessment methodologies and the tools to allow industry to make informed decisions.

The high priority will be dealing with community-wide environmental optimisation although much will have already been achieved in urban design, transport modes and demand and domestic environmental impacts. Expectations and requirements for environmental performance will have moved from policing regulatory authorities to action by industry, business and the community. This Vision is one of enlightened and effective environmental self-regulation.

The Present

At present, many environmental statutes are based on a policing and sanctions approach widely referred to as "command and control". They rely on the philosophical assumption that industry and the broader community need legislatively-based commands setting out appropriate environmental behaviour and that they must be coerced by statutory inspection and penalties. Historically, there have been good reasons for this approach and many will be able to point to cases where such an approach may still be considered essential. Some in industry seek to continue with this approach as a means of achieving a greater sense of certainty in their environmental obligations.

In a real sense, though, the fundamentals of the current regulatory framework have not been adequately examined from an outcomes and cost-benefit perspective. The recent report, *The Environmental Challenge: Best Practice Environmental Regulation* (BPER) by the Australian Manufacturing Council does provide a framework for commencing to evaluate the issues. The Vision enunciated earlier begs the critical question of whether historical regulatory incrementalism will indeed optimise environmental outcomes for the resources invested in the regulatory effort and achieve the eventual outcome the community wishes. It is contended here that policy incrementalism will not succeed for a number of reasons including resource limitations and the current changes underway in industry.

Recent investigations have highlighted some sobering statistics about the current regulatory effort. There are approximately 2000 Environment Protection Authority (EPA) licensees in Victoria and around 7000 firms and other enterprises subject to trade waste agreements such as those issued by the Melbourne Water Corporation. The EPA's regulatory effort covers about 16 per cent of the total manufacturing establishments recorded in the 1990-91 manufacturing industry census by the Australian Bureau of Statistics and a very much smaller percentage of the total number of firms contributing to environmental impacts in Victoria. The extension of the EPA effort to all manufacturing firms alone could require up to six times its current resources—from 300 staff to closer to 1800. Clearly, this is impractical and from a community viewpoint, unacceptable. Additional resources will not become available. The "command and control" and inspection approach is resource-limited. It cannot achieve the Vision outlined earlier. (None of these comments should be taken as critical of the Victorian EPA. On the contrary, the EPA has had to cope with the problems of fewer resources and greater expectations.)

The world to be environmentally regulated has changed. Environmental performance in responsible companies is now moving with and is sometimes in advance of community expectations and the requirements of governments. To meet these expectations and requirements, as well as duty of care and due diligence imperatives, forward thinking organisations are implementing robust environmental management systems. These are often based on the Total Quality Management principles already being applied to company or organisation processes, such as manufacturing operations.

The best practice management systems usually incorporate:

- leadership and commitment;
- systems and standards;

- discipline through full self-auditing of systems and performance as well as in decision-making;
- preparedness for emerging requirements and "crises", and;
- openness via external accreditation and communications with employees, communities, governments and the media on environmental issues.

Many leading companies, including BHP, DuPont, BP, L&K Rexona, SC Johnson, ICI Australia, and Amcor have developed and publicised specific environmental goals and objectives. The commitment to environmental management in responsible companies and organisations is now beyond doubt. The results of these management systems are already apparent and are being widely acknowledged in reports such as BPER and included in annual and environmental reports.

Other examples of change include the actions of industry associations. They are playing a broad leveraging role in industry by raising awareness of the importance of environmental stewardship; for example, the Business Council of Australia, published *Principles of Environmental Management* in 1992. These Principles cover such issues as environmental protection, environmental management, performance assessment, assessment and management of environmental risk and more. They are complementary to the *Business Charter for Sustainable Development* released in 1991 by the International Chamber of Commerce and endorsed by over 500 companies internationally.

The Australian Chamber of Manufactures' *Environmental Management Handbook for Small Industry* and the chemical industry's commitment to the Responsible Care program are also excellent examples of the changes underway. The Australian Manufacturing Council's *The Environmental Challenge: Best Practice Environmental Management* (BPEM), a companion publication to the BPER report referred to earlier, captured the essence of these environmental changes in industry. The report highlighted the continuing need for enhanced commitment by industry and recommended action by industry, regulators, trade unions and the community to speed the achievement of best practice on environmental issues.

The ecologically sustainable development process and strategy in Australia and the sustainable development goal of meeting the needs of the present without compromising the needs of future generations have been important in underpinning the emergence and maturation of environmental commitment in industry.

Regulatory incrementalism if adhered to will be out of step with these changes and worse, may actively discourage or impede their development and adoption.

The Next Steps

There are a number of options which can be implemented now and which will assist in achieving the Vision described in this paper. The options include:

- risk-based decision making (the "performance standard" option);
- pledge and review (the "voluntary environmental improvement plan" option);
- tradeable permits (the "market instruments" option);
- technical support (the "information" option);
- self-auditing and external accreditation (the "self-regulation" option); and
- commercial arrangements (the "contracts" option).

Each of these will play a role in the achievement of the Vision.

It is perhaps surprising and pleasing that developments in these areas are now well underway. Examples drawn from the BPER report include:

- differential environmental resource use pricing (most Australian States);
- cooperative sewerage treatment (New South Wales);
- environmental guidelines (Queensland);
- environmental management plans (Queensland);
- "The Question of Trust": accredited licensee system (Victoria);
- voluntary waste reduction agreements (Victoria);
- Kwinana airshed program (Western Australia).

Other key initiatives include the establishment of the Australia Centre for Cleaner Production (ACCP) in Victoria. The Centre is being sponsored by the Victorian Government through the EPA. It will be self-funding and will promote the adoption of internationally competitive cleaner production philosophies and practices which meet the needs of industry and the community. This Centre has more scope to accelerate the move towards the Vision than many other initiatives because it will provide the necessary information to industry decision-makers for real environmental and economic improvements at the plant and process level. ACCP is being complemented by other important cleaner production initiatives such as *A Cleaner Australia 2001—Cleaner Production* program being implemented by the Commonwealth Environment Protection Agency.

Each of these approaches assist in moving industry and the whole community towards the Vision. Additional innovative approaches are needed. These can come from asking the right questions now and working cooperatively to frame the solutions, but only if we unshackle our thinking and practice from the past. Some of the environmental law dilemmas being faced now, such as third party standing, will cease to be relevant. Others, for example, compulsory environmental audits will be routine elements in little used "safety net" statutes.

The Means

Further far-reaching changes will be required, focussing on industry and related enterprises. Legal practitioners, financiers and insurers will all play a key role in facilitating change. In many ways, this is happening already. The net effect will be one of a self-regulating market-based approach to environmental improvement.

Industry changes will also be necessary. To achieve the optimum economic and environmental outcomes, there is no doubt that industry must perform and be seen to perform environmentally in a manner acceptable to the community. In the end, it is only through a community's tacit licence that any company can continue to operate and generate benefits to all stakeholders. Optimum environmental and economic performance will not happen quickly unless there are real and commensurate regulatory and compliance cost reductions flowing to industry. Time, technology, knowledge and resources are also important.

Kinhill Engineers and similar firms with expert environmental, engineering and process capabilities are contributing substantially to change through environmental management, systems, audit, improvement planning, cleaner production and process design, technology, life-cycle analysis, waste management, environmental impacts assessments, product design and related services. Several organisations are also providing external environmental accreditation services.

Community and environmental groups may also play an important role in effecting environmental improvements in the direction of the Vision. The greatest achievements will be made if their efforts are directed towards cooperative solutions.

These means are vital and their continued development is a prerequisite to furthering attainment of the Vision of enlightened and effective environmental self-regulation. Achieving the optimum sustainable development outcome is a real challenge.