

Environment Protection (Environment and Resource Efficiency Plans) Regulations

Exposure Draft

TABLE OF PROPOSALS

<i>Proposal</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1 Objectives	1
2 Authorising provision	2
3 Commencement	2
4 Definitions	2
PART 2—ENVIRONMENTAL RESOURCES THRESHOLDS AND REGISTRATION PERIOD	4
5 Prescribed thresholds for the purposes of the definition of <i>scheduled activity</i> and prescribed period for registration	4
6 Criteria to determine the user of energy and the amount of energy	7
7 Exemption from program	9
PART 3—THE REGISTER	11
8 Prescribed periods	11
9 The register of scheduled activities	11
PART 4—ENVIRONMENT AND RESOURCE EFFICIENCY PLANS	12
10 Definitions	12
11 Prescribed criteria for preparation of EREP	12
12 Submission of EREP for approval	12
13 Exemption from need to prepare an EREP	12
14 Partial exemption from need to prepare an EREP	14
15 Prescribed periods	16
16 Performance reports	16
17 Operation of EREP	18

<i>Proposal</i>	<i>Page</i>
SCHEDULES	20
SCHEDULE 1—Energy Use	20
PART 1—Energy and energy sources	20
PART 2—Energy that is not treated as energy used by a person	22
SCHEDULE 2—Prescribed criteria to be included in an EREP under section 26H(b) of the Act	24



Victoria

Environment Protection (Environment and Resource Efficiency Plans) Regulations

Exposure Draft

PART 1—PRELIMINARY

1 Objectives

The objectives of these Regulations are to prescribe—

- (a) requirements for the definition of a scheduled activity for the purposes of the **Environment Protection Act 1970**;
- (b) criteria for the preparation of an Environment and Resource Efficiency Plan;
- (c) when persons are required to register;
- (d) criteria and considerations for deciding applications for exemption from the requirement to prepare an Environment and Resource Efficiency Plan;
- (e) the reports that a person must submit and the details and timing of the reports.

2 Authorising provision

These Regulations are made under section 71 of the **Environment Protection Act 1970**.

3 Commencement

These Regulations come into operation on 1 January 2008.

4 Definitions

In these Regulations—

combustible fuel means an energy source that is—

- (a) specified in Part 1 of Schedule 1 as an energy source; and
- (b) combusted to create energy;

energy means energy or energy sources specified in Schedule 1 used at a premises in accordance with the criteria described in regulation 6;

environmental resources means the environmental resources prescribed in regulation 5(5);

EREP means an Environment and Resource Efficiency Plan;

the Act means the **Environment Protection Act 1970**;

trigger year means a financial year commencing on 1 July 2006, or 1 July in any subsequent year, for which the use at a premises of environmental resources of the kind prescribed in regulation 5(5) for the purposes of the definition of a scheduled activity exceeds the threshold prescribed in regulation 5(6);

Environment Protection (Environment and Resource Efficiency Plans)
Regulations
Exposure Draft
Part 1—Preliminary

water means water used at a premises not including seawater but including rainwater, stormwater, desalinated water, groundwater and recycled (including reused) water, however obtained or supplied.

Note

Scheduled activity is defined in section 4(1) of the Act as meaning—

- (a) the use at a premises of environmental resources in excess of the threshold prescribed for resources of a kind prescribed for the purposes of this definition; or
 - (b) the disposal of waste off-site from a premises in excess of the threshold prescribed for wastes of a kind prescribed for the purposes of this definition.
-

**PART 2—ENVIRONMENTAL RESOURCES THRESHOLDS
AND REGISTRATION PERIOD**

**5 Prescribed thresholds for the purposes of the
definition of *scheduled activity* and prescribed period
for registration**

- (1) This regulation sets out—
 - (a) the kind of environmental resources prescribed for the purposes of the definition of a scheduled activity; and
 - (b) the prescribed thresholds for the purpose of determining whether a person is undertaking a scheduled activity; and
 - (c) for the purposes of section 26F(1) of the Act the prescribed period for registration of a scheduled activity.
- (2) Nothing in this regulation applies to the use of premises that are used primarily for—
 - (a) primary production; or
 - (b) residential housing.
- (3) In this regulation, ***primary production*** means agriculture, apiculture, aquaculture, forestry or horticulture but not the processing of agricultural produce, or intensive livestock production.

Example

An example of intensive livestock production is a piggery, cattle feedlot or poultry farm.

- (4) Despite regulation 4, for the purposes of this regulation—
 - (a) ***water*** includes only water used at a premises that is—
 - (i) supplied by an authority under the **Water Act 1989**;

- (ii) supplied by a licensee under the **Water Industry Act 1994**;
 - (iii) obtained under a licence granted under section 51 of the **Water Act 1989**;
 - (iv) obtained under a bulk entitlement granted under Division 1 of Part 4 of the **Water Act 1989**;
 - (v) used by a water corporation under the **Water Act 1989** or a licensee under the **Water Industry Act 1994** for the purpose of operating or maintaining plant or infrastructure;
- (b) *water* does not include water used at a premises that is—
- (i) part of an environmental allocation under Division 1A of Part 4 of the **Water Act 1989**; or
 - (ii) recycled water within the meaning of section 3(1) of the **Water Act 1989**.
- (5) The kind of environmental resources prescribed for the purposes of the definition of a scheduled activity are—
- (a) the energy and energy sources specified in Schedule 1; and
 - (b) water.
- (6) The thresholds prescribed in respect of the use of environmental resources prescribed in subregulation (5) are the use of 100 terajoules of energy or 120 megalitres of water in any trigger year.
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Environment Protection (Environment and Resource Efficiency Plans)
Regulations
Exposure Draft

Part 2—Environmental resources thresholds and registration period

- (7) An activity ceases to be a scheduled activity if the person who undertakes the scheduled activity satisfies the Authority that the energy and water used in undertaking the activity has not exceeded the thresholds prescribed in subregulation (6) for 3 consecutive financial years.
 - (8) A person who is undertaking a scheduled activity as at 1 January 2008 must register with the Authority within the period of 3 months after 1 January 2008.
 - (9) A person who undertakes a scheduled activity after 1 January 2008 must register with the Authority with the period of 3 months after the end of the trigger year.
 - (10) A person who registers with the Authority under this regulation and who provides information under subregulation (8) may apply to the Authority in writing requesting an extended period within which to submit an EREP in accordance with subregulation (11).
 - (11) Subject to subregulation (12), a person referred to in subregulation (8) must submit to the Authority for approval an EREP prepared under section 26H of the Act within the period of 12 months after 1 January 2008.
 - (12) For the purposes of this regulation, the Authority may extend the period referred to in subregulation (11) within which a person who applies under subregulation (10) must submit to the Authority for approval an EREP prepared under section 26H of the Act by a period of up to a further 12 months where the energy used or water used in the trigger year does not exceed—
 - (a) 250 terajoules of energy; and
 - (b) 150 megalitres of water.
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6 Criteria to determine the user of energy and the amount of energy

- (1) In these Regulations, the user of energy is determined by applying the principles described in column 3 of the Table to the energy or energy source described in column 2 of the Table.

TABLE

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Energy or energy source</i>	<i>Principle</i>
1	derived from an energy source that is a combustible fuel	the energy is used by the person— (a) that last purchased the fuel for combustion, or produced it for combustion (whether the person combusts the fuel or permits or requires it to be combusted by another person who does not purchase or produce the fuel); and (b) on the combustion of the fuel
2	electricity	the electricity is used by the person that last produced it or purchased it for consumption (whether the person consumes the electricity or allows it to be consumed by another person who does not produce or purchase the electricity)

Environment Protection (Environment and Resource Efficiency Plans)
Regulations
Exposure Draft

Part 2—Environmental resources thresholds and registration period

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Energy or energy source</i>	<i>Principle</i>
3	compressed air	the compressed air is used by the person that last produced it or purchased it for consumption (whether the person consumes the compressed air or allows it to be consumed by another person who does not purchase the compressed air)
4	steam	the steam is used by the person that last produced it or purchased it for consumption (whether the person consumes the steam or allows it to be consumed by another person who does not purchase the steam)
5	derived from a reductant	the reductant is used by the person when the person uses the reductant to produce energy or combustible fuel

- (2) For the purposes of this regulation, energy used by a person does not include the use of energy or energy sources specified in Part 2 of Schedule 1.
- (3) The Authority may approve a conversion factor for the purpose of converting an energy source to an amount of energy.

Note

A conversion factor may be required in order to set out a method for measuring the energy use of a person where the only available measure of the person's energy consumption is by reference to the energy source they have acquired.

7 Exemption from program

- (1) Despite regulation 5, the thresholds prescribed in regulation 5(6) do not apply to a person in relation to the financial year immediately following a trigger year where the Authority has notified the person that the Authority is satisfied that—
 - (a) the energy used or the water used in the trigger year was abnormally high and the use of energy or water would normally fall below the thresholds prescribed; or
 - (b) within the period of 12 months after the end of the trigger year the undertaking of the activity at the premises will cease or the manner of undertaking the activity at the premises will substantially change and will lower the energy used or the water used to below the thresholds prescribed.
 - (2) A person who wishes the Authority to exercise its discretion under subregulation (1) must apply in writing to the Authority within the registration period prescribed in regulation 5 in a form approved by the Authority—
 - (a) signed by the person providing the information; and
 - (b) including a statement that the energy used or water used in the financial year after the trigger year is unlikely to exceed the thresholds prescribed; and
 - (c) including information to support the statement as required by the Authority; and
 - (d) including a statement by the person providing the information that the information included in the application is, to the best of the person's knowledge, correct
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Environment Protection (Environment and Resource Efficiency Plans)
Regulations
Exposure Draft

Part 2—Environmental resources thresholds and registration period

and in accordance with the requirements of
the Act and these Regulations.

PART 3—THE REGISTER

8 Prescribed periods

- (1) For the purposes of section 26F(2)(a) of the Act, the prescribed period is 3 months from the date when the person ceases to undertake the scheduled activity.
- (2) For the purposes of section 26F(2)(b) of the Act, the prescribed period is 3 months from the date when the activity undertaken by the person ceases to be a scheduled activity.
- (3) For the purposes of section 26F(3) of the Act, the prescribed period is 3 months from the date when the transfer of the undertaking takes effect.

9 The register of scheduled activities

For the purposes of section 26G of the Act, the relevant details to be entered by the Authority in the register of scheduled activities are the details that are provided at registration except information of a type that—

- (a) the Authority considers is likely to be commercial in confidence; or
 - (b) is the name of any natural person (other than where the person undertaking the scheduled activity is a natural person); or
 - (c) is the telephone number of any natural person.
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PART 4—ENVIRONMENT AND RESOURCE EFFICIENCY PLANS

10 Definitions

In this Part—

payback period, for an action, unless the contrary intention appears, is the period expressed in years, calculated in accordance with the formula—

$$\frac{A}{B}$$

where—

A is an amount equal to the initial capital cost of implementation; and

B is an amount equal to the net annual savings, without taking the initial capital cost of implementation into account;

waste means solid or liquid matter only.

11 Prescribed criteria for preparation of EREP

For the purposes of section 26H(b) of the Act, an EREP must be prepared in accordance with the prescribed criteria specified in schedule 2.

12 Submission of EREP for approval

For the purposes of section 26J of the Act, the prescribed period is 12 months from the end of the relevant trigger year.

13 Exemption from need to prepare an EREP

- (1) For the purposes of section 26N of the Act, the criteria and considerations prescribed for an exemption wholly from the requirement to prepare an EREP under section 26H are that—
-

- (a) the person has developed an alternative action plan to improve the efficiency of environmental resources used by, and to minimise waste generated through, the operations constituting the scheduled activity; and
 - (b) the alternative action plan identifies and assesses environmental resource efficiency actions consistently with the requirements of the Act and these Regulations; and
 - (c) the alternative action plan proposes actions to make environmental resource efficiency gains or to minimise waste generated through the operations constituting the scheduled activity consistently with the requirements of the Act and these Regulations; and
 - (d) the Authority is satisfied that in comparison with the actions under the alternative action plan, preparation of an EREP by the person is unlikely to obtain any significant additional reductions in environmental resource use or waste generated through the operations constituting the scheduled activity during the relevant period.
- (2) The Authority may also exempt a person wholly from the requirement to prepare an EREP under section 26H of the Act if—
- (a) the activity that constitutes a scheduled activity is being undertaken at a scheduled premises; and
 - (b) an application for a works approval under section 19A of the Act has been made after 1 January 2008 in relation to works proposed to be carried out at the scheduled premises and works approval has been given within
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- the period of 3 years before the date of any application made under subregulation (3); and
- (c) the Authority is satisfied that in comparison with the actions under the works approval referred to in paragraph (b) or a licence in relation to the scheduled premises, preparation of an EREP by the person is unlikely to obtain any significant additional reductions in environmental resource use or waste generated through the operations constituting the scheduled activity for a period of 5 years from when the exemption is granted.
- (3) A person who wishes the Authority to exercise its discretion under subregulations (1) or (2) must—
- (a) register with the Authority in accordance with regulation 5; and
- (b) apply in writing to the Authority, in a form approved by the Authority, within the registration period prescribed in regulation 5.
- (4) If the Authority grants a complete exemption under section 26N of the Act, any alternative action plan approved by the Authority is to be taken to be an EREP for the purposes of regulations 5 and 16.

14 Partial exemption from need to prepare an EREP

- (1) For the purposes of section 26N of the Act, the criteria and considerations prescribed for an exemption partly from the requirement to prepare an EREP under section 26H of the Act are that—
- (a) the person has developed an alternative action plan to improve the efficiency of one or more environmental resources used by, or waste generated through, the operations constituting the scheduled activity; and
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Environment Protection (Environment and Resource Efficiency Plans)
Regulations
Exposure Draft

Part 4—Environment and resource efficiency plans

- (b) the alternative action plan identifies and assesses environmental resource efficiency actions consistently with the requirements of the Act and these Regulations; and
 - (c) the alternative action plan proposes actions to make environmental resource efficiency gains or to limit generation of waste consistently with the requirements of the Act and these Regulations; and
 - (d) the Authority is satisfied that the actions under the alternative action plan would, or would when undertaken, be reasonably equivalent to any one or more components that would otherwise have to be included in an EREP prepared by the person.
- (2) The Authority may also exempt a person partly from the requirement to prepare an EREP under section 26H of the Act where—
- (a) the activity that constitutes a scheduled activity is being undertaken at a scheduled premises; and
 - (b) an application for a works approval under section 19A of the Act has been made after 1 January 2008 in relation to works proposed to be carried out at the scheduled premises and works approval has been given within the period of 3 years before the date of any application made under subregulation (3); and
 - (c) the Authority is satisfied that in comparison with the actions under the works approval referred to in paragraph (b) or a licence in relation to the scheduled premises, preparation of an EREP by the person is unlikely to obtain any significant additional reductions in environmental resource use or
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waste generated through the operations constituting the scheduled activity, for a period of 5 years from when the exemption is granted, in relation to a component of the scheduled activity.

- (3) A person who wishes the Authority to exercise its discretion under subregulation (1) or (2) must—
 - (a) register with the Authority in accordance with regulation 5; and
 - (b) apply in writing to the Authority, in a form approved by the Authority, within the registration period prescribed in regulation 5.
- (4) If the Authority grants a partial exemption under section 26N of the Act, any alternative action plan approved by the Authority, together with the approved EREP for the outstanding components, is to be taken to be an EREP for the purposes of regulations 5 and 16.

15 Prescribed periods

- (1) For the purposes of section 26L(1) of the Act, the prescribed period is 4 months from date the EREP is submitted to the Authority.
- (2) For the purposes of section 26N(2) of the Act, the prescribed period is 4 months from the date the application for exemption is submitted to the Authority.
- (3) For the purposes of section 26N(3) of the Act, the prescribed period is 14 days from the date the Authority makes the decision.

16 Performance reports

- (1) A person undertaking a scheduled activity must submit an annual performance report to the Authority.
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Environment Protection (Environment and Resource Efficiency Plans)
Regulations
Exposure Draft

Part 4—Environment and resource efficiency plans

- (2) An annual performance report must be submitted to the Authority—
 - (a) within the period of 6 months after the end of the relevant financial year; or
 - (b) by an earlier annual reporting date that the person has specified in an EREP that has been approved by the Authority.
 - (3) An annual performance report must describe in relation to the previous financial year—
 - (a) the quantity of each type of energy used, each type of water used, and total waste generated;
 - (b) actions to achieve environmental resource efficiency gains or to minimise waste generation that have been fully implemented and those that have been partially implemented;
 - (c) the cost in dollars of implementing the actions;
 - (d) energy, water and waste efficiency gains that have been made by implementing the actions;
 - (e) the financial savings associated with the actions that have been implemented.
 - (4) An annual performance report must include updated resource prices and updated payback period calculations for all actions identified.
 - (5) In addition to the requirements of subregulations (3) and (4), the annual performance report required to be submitted to the Authority in the year in which an EREP expires must describe—
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- (a) what actions to achieve environmental resource efficiency gains or minimisation of waste generation have been implemented since the commencement of the EREP;
 - (b) energy, water and waste efficiency gains that have been made since the commencement of the EREP;
 - (c) any failure to implement planned actions within the timeframes specified in the EREP;
 - (d) any additional actions that are planned to be implemented after the expiry date.
- (6) Any report under this regulation must include a statement by the person providing the information that the information included in the report is, to the best of the person's knowledge, correct and in accordance with the requirements of the Act and these Regulations.

17 Operation of EREP

For the purposes of section 26P(3)(a) of the Act, the process prescribed for requesting substitution of a new EREP for an approved EREP that is in operation is—

- (a) the person conducting the scheduled activity must notify the Authority of any proposed changes to the approved EREP;
 - (b) the person must prepare a proposed substitute EREP in accordance with section 26H of the Act;
 - (c) the person must submit the proposed substitute EREP to the Authority for approval in accordance with section 26J of the Act;
 - (d) the Authority must decide whether to approve the proposed substitute EREP in accordance with section 26L of the Act;
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Environment Protection (Environment and Resource Efficiency Plans)
Regulations
Exposure Draft

Part 4—Environment and resource efficiency plans

- (e) implementation of the approved EREP that is in operation must continue in accordance with section 26M of the Act unless the Authority approves the substitute EREP in accordance with section 26L of the Act.
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SCHEDULES

SCHEDULE 1

ENERGY USE

PART 1—ENERGY AND ENERGY SOURCES

Energy

Electricity (whether from renewable or other sources).

Steam (if used to provide energy).

Compressed air (if used to provide energy).

Energy sources

Combustible fuels

Agricultural and food processing residues.

Bagasse.

Biodiesel.

Biogas.

Black liquor.

Coal (all kinds).

Coal seam methane.

Condensate.

Crude oil.

Ethanol.

Fuels derived from coal, including the following:

blast furnace gas;

benzene, toluene and xylene (BTX);

coal tar;

coke;
coke oven gas;
gaseous fuels derived from coal;
synthetic liquid.

Hydrogen and reductants.

Landfill gas.

Natural gas.

Natural gas liquids.

Petroleum products including the following:

automotive diesel oil;
automotive gasoline (petrol);
aviation gasoline (avgas);
aviation turbine fuel (avtur);
fuel oil;
kerosene, heating oil;
liquefied petroleum gas (LPG);
marine diesel oil;
synthetic petroleum products derived from natural gas.

Petroleum fuel blends (for example, blends of petroleum and ethanol).

Sewage gas.

Sulfur (when converted to electricity).

Unconventional crudes and related oils (for example, shale oil).

Wood and wood waste.

Other materials used as an energy source by means of combustions (for example, waste or vehicle tyres).

Other

A reductant.

**PART 2—ENERGY THAT IS NOT TREATED AS ENERGY
USED BY A PERSON**

- (1) Energy or energy sources sold by the person.

Example

Electricity or steam produced at a premises but exported from the premises to a purchaser.

- (2) Energy and energy sources—

- (a) produced and stored without being used; or
- (b) purchased and stored without being used.

Example

Fuel stored in tanks. If the stored energy is then used, it would be counted as energy use.

- (3) Material that is a potential energy source, but is disposed of as a waste product.

Examples

- 1 Bagasse that is burned for a purpose other than as an energy source.
- 2 Waste gas that is vented or flared.

- (4) Material that is a potential energy source, but is used for another purpose.

Examples

- 1 Gas or liquid hydrocarbons used as chemical feedstock in plastics manufacture.
- 2 LPG used as a propellant in aerosols.
- 3 Hydrocarbons used as a solvent.
- 4 Ethanol used in consumer goods or lubricants.
- 5 Base oils used in lubricants.
- 6 Energy used as a reductant in an endothermic reaction.

However, if—

- (a) the material is used to provide or produce energy and for another purpose; and
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Environment Protection (Environment and Resource Efficiency Plans)
Regulations
Exposure Draft

(b) the amount that is used to provide or produce energy cannot be differentiated from the amount that is used for the other purpose—

the entire amount is to be treated as having been used to provide or produce energy, and counts as part of the energy use of the person.

SCHEDULE 2

PRESCRIBED CRITERIA TO BE INCLUDED IN AN EREP UNDER SECTION 26H(b) OF THE ACT

- (1) A description of the relevant environmental resource use of the scheduled activity and any waste generated at a premises in relation to the scheduled activity including—
 - (a) a list of the key uses of the premises that consume significant quantities of energy or water or generate waste at a premises;
 - (b) supporting material which demonstrates that the list is adequate including—
 - (i) a site map;
 - (ii) resource flow diagrams identifying relevant environmental resource/waste type and quantity used/generated including, where relevant—
 - (A) trade waste generated;
 - (B) commercial or industrial waste generated;
 - (C) prescribed waste generated;
 - (D) water and energy used;
 - (c) baseline data with respect to relevant environmental resource use/generation of waste at a premises collected over a period of at least 12 months;
 - (d) efficiency indicators developed to enable the identification of inefficiencies associated with the relevant environmental resource use/generation of waste at a premises; and
 - (e) documentation that efficiency indicators have been compared against industry standards (where available).
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- (2) A plan of actions to achieve relevant energy, water and waste efficiency gains including—
- (a) a list of actions that could be undertaken at the premises (or with the approval of the Authority, an alternative premises) to improve efficiency of energy and water use or generation of waste at a premises;
 - (b) an indication of which actions have a payback period—
 - (i) of 3 years or less, which are required to be implemented;
 - (ii) exceeding 3 years, which need not be implemented;
 - (c) estimated costs in dollars of implementing each action;
 - (d) estimated cost savings from implementing each action;
 - (e) estimated efficiency gains associated with each action;
 - (f) identification of the person responsible for ensuring that each action is implemented;
 - (g) the month and year in which each action will be implemented.
- (3) Supporting material which demonstrates that the list of actions referred to in paragraph (2) is appropriate, including documentation establishing—
- (a) that a consultation process has been conducted to determine which actions could be undertaken to reduce the inefficiency associated with the use of resources/generation of waste off at a premises;
 - (b) that the impacts of each of the proposed actions on other uses of the premises associated with environmental resource use/generation of waste at a premises have been identified;
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- (c) how the actions have been prioritised/reasons for which actions will/will not be implemented, including calculations of financial viability, investment cycles and business priorities;
 - (d) how the implementation timeframes have been determined and how implementation of each action will be resourced.
- (4) A description of how the implementation of the EREP is to be monitored including—
- (a) an outline of the monitoring process including—
 - (i) identification of the person(s) responsible;
 - (ii) dates for system review;
 - (iii) dates for communication with the Authority;
 - (b) supporting materials documenting how the process will be undertaken, including a process for dealing with delayed or disrupted implementation.
- (5) The period of time for which the EREP is to be in operation, including supporting material demonstrating how—
- (a) an appropriate period of time has been established; and
 - (b) the established period of time is consistent with the timeframes for the implementation of each action.
- (6) A statement by the person providing the information that the information included in the submission is, to the best of the person's knowledge, correct and in accordance with the requirements of the Act and these Regulations.
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