



South Australia's Environment Protection Authority

PARTICULATE (DUST) MANAGEMENT

(The Environment Protection Act 1993)

Thursday 29 October 2009

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The Environment Protection Act 1994

- general duty
- offences & penalties
- licensing of activities

Policies made under the Act

Water quality policy

Noise policy

Air quality policy

Waste policy

EPA responsibilities

- The EPA is responsible for administering and enforcing the Act including
 - Environment Protection Policies (EPPs)
 - Codes of practice
 - Guidelines.
- The EPA uses a number of tools to administer the Act, ranging from **cooperation** to **enforcement**.

General environmental duty (s25)

- Every person has a general duty to protect the environment
- A person must not undertake an activity that pollutes, or might pollute, the environment unless the person takes all *reasonable and practicable measures* to prevent or minimise any resulting environmental harm

In considering a breach s25(2) says

Regard should be had to:

- The nature of the pollutant
- The sensitivity of the receiving environment
- The financial burdens to the industry generally
- The current state of technical knowledge
- How successful the required measures might be

What have the courts said about reasonable & practicable?

Slivak v Lurgi (Australia) Pty Ltd [2001]



- "**reasonably practicable**" are ordinary words bearing their ordinary meaning. And the question whether a measure is or is not **reasonably practicable** is one which requires no more than the making of a value judgment in the light of all the facts.

Overall, the cases suggest:

- the phrase "**reasonably practicable**" means something narrower than "physically possible" or "feasible"
- what is "**reasonably practicable**" is to be judged on the basis of what was known at the relevant time
- to determine what is "**reasonably practicable**" it is necessary to balance the likelihood of the risk occurring against the cost, time and trouble necessary to avert that risk



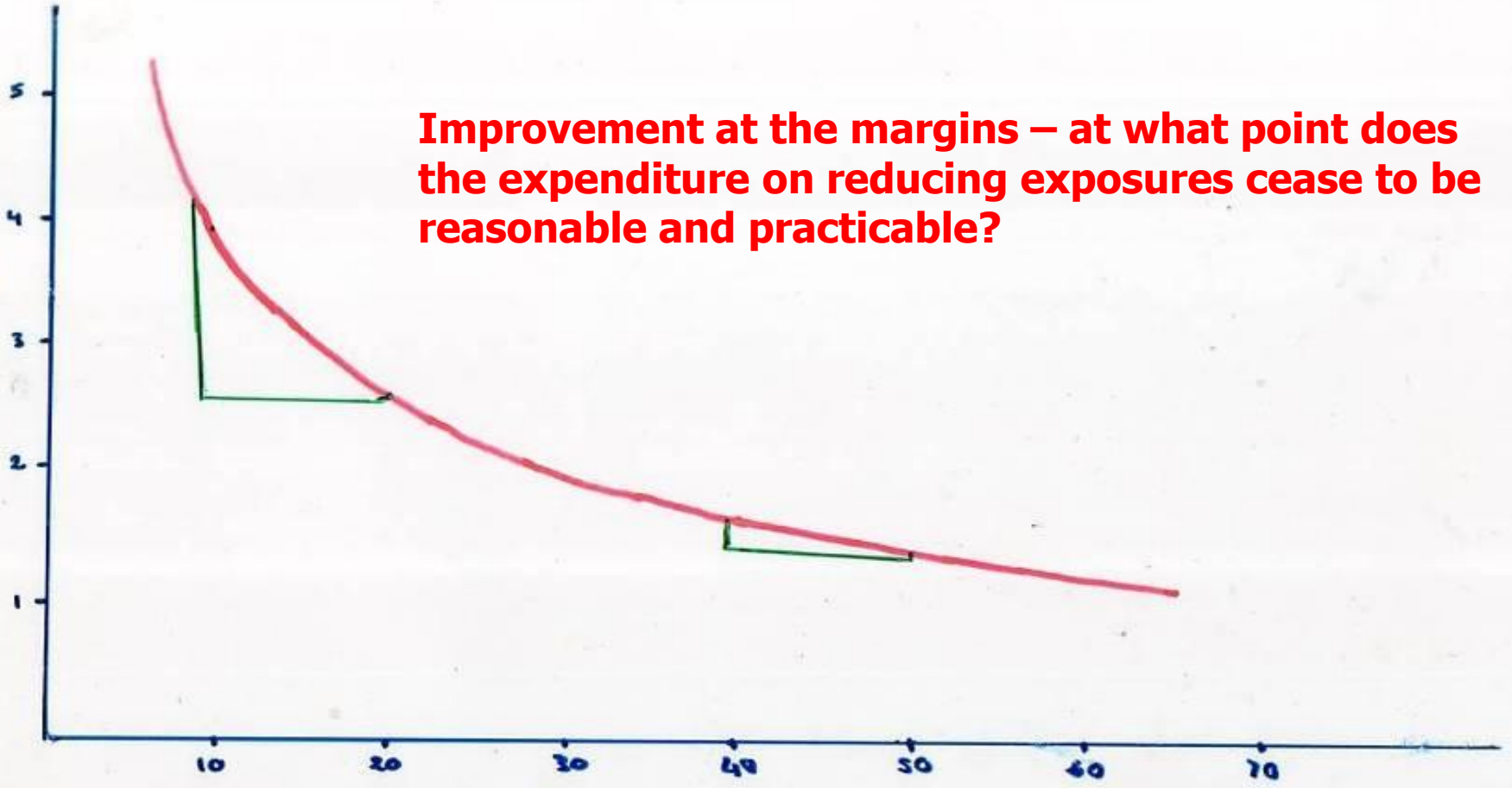
How do we apply a test for Reasonable & Practicable?

Environmental Benefits

Burden of compliance



↑
Units of exposure



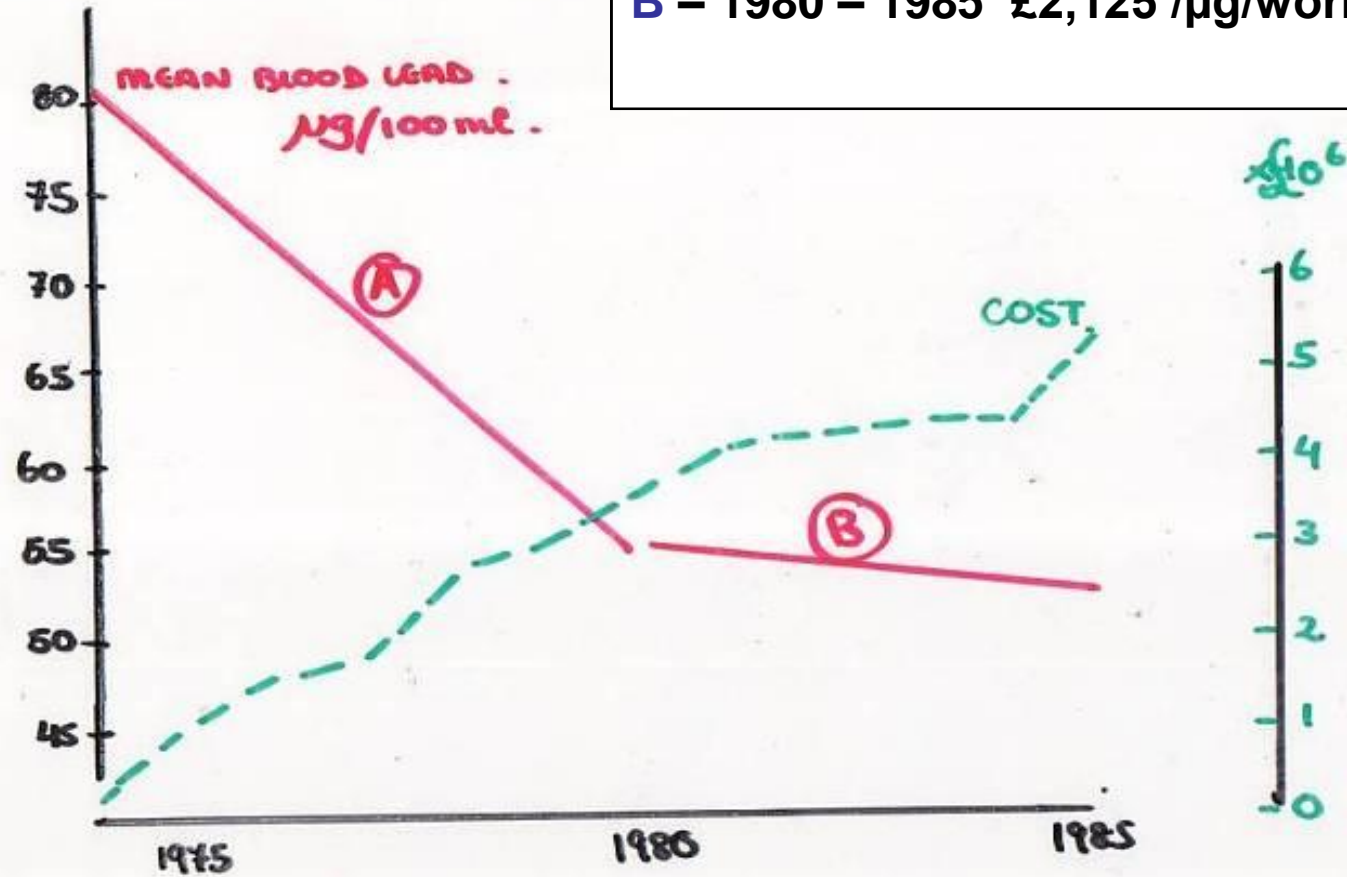
Improvement at the margins – at what point does the expenditure on reducing exposures cease to be reasonable and practicable?

Thousands of \$ →

Cost of reducing lead levels

A - 1974 - 1979 £626 / μg /worker

B - 1980 - 1985 £2,125 / μg /worker



King, Occ Health Review Aug/Sept 1986, 22

s 25 – in assessing what is Reas & Prac

The key issues seem to be -

- the benefits gained by preventing the impacts on the environment
- the costs of what might be required
- the current state of knowledge and will the requirements work?

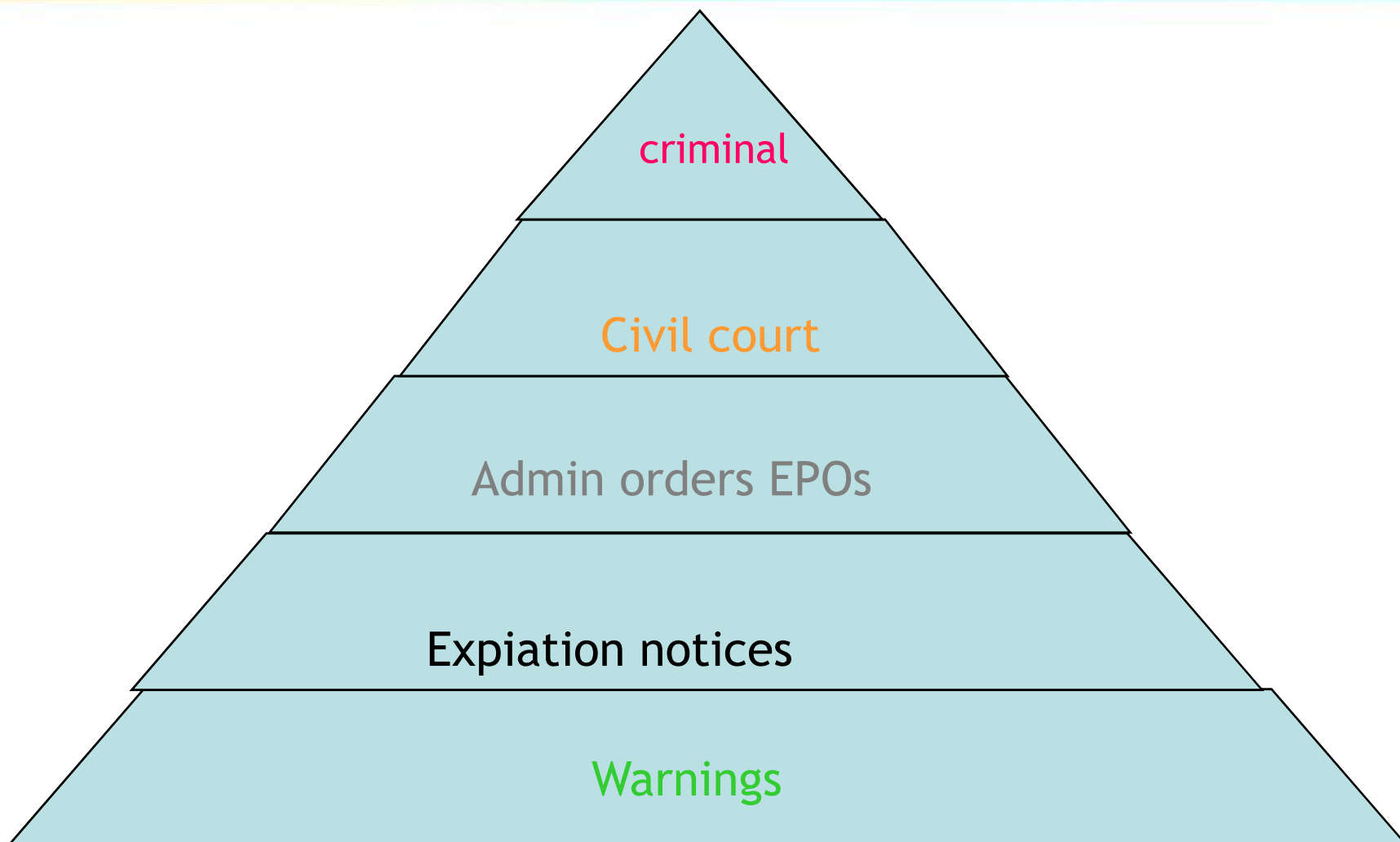
Other issues that might be relevant

- What technology or interventions are available?
- Does the cost match the benefit? (law of diminishing returns)
- What has been done in similar situations – what was the outcome?
- Does it meet the required environmental standard?
- Is there ongoing harm (post upgrade) and if so how serious?
- Will the community accept it?

Enforcement of S 25

- There is no penalty for being in breach of s 25
- But the EPA may issue an:
 - Environment Protection Order; or
 - Clean up Orderto require compliance with the general environmental duty
- Max penalty for non-compliance with an order is usually \$4,000 (s93(8))

Enforcement options



Main offences

- S 79 Causing *serious environmental harm* “high impact to human beings or property damage exceeding \$50 000”
- S 80 Causing *material environmental harm* max “environmental nuisance of a high impact or harm to human beings that is not trivial or property damage exceeding \$5 000”
- S 82 Causing *environmental nuisance*

Environmental Nuisance

"environmental nuisance" means

any adverse effect on an amenity value of an area that is caused by pollution; *and* unreasonably interferes with or is likely to interfere unreasonably with the enjoyment of the area by persons occupying a place within, or lawfully resorting to, the area; or

any unsightly or offensive condition caused by pollution;



S 82 causing an environmental nuisance



- A person who causes an environmental nuisance by polluting the environment intentionally or recklessly and with the knowledge that an environmental nuisance will or might result is guilty of an offence.

penalty up to \$60 000

- A person who by polluting the environment causes an environmental nuisance is guilty of an offence.

penalty up to \$15 000

Main offences continued

- S 45 - Breach of licence condition max penalty \$120,000
- S 34 - Breach of a mandatory environment protection policy provision max penalty \$250,000

Typical licence conditions #1

- To take all reasonable and practicable measures to minimise dust generation during the handling and storage of sand and aggregate;
- dust emissions from roadways and yard areas must be minimised;
- roadways from the works entrance to the loading points, etc must be hard-surfaced and kept clean;
- Dust must be removed regularly so that build-up does not occur;
- Dust must be suppressed using water or a dust suppression agent during dry weather periods;
- Material not to be stored in bunkers above the level of the partitions;
- Materials must be wetted prior to loading.

Typical licence conditions #2

- The Licensee must ensure that solid particle emissions from point sources do not exceed the following limits:
 - 1. Foundry Fume Emissions – *specified value*;
 - 2. Total Heavy Metals – *specified value*;
 - 3. Cadmium Compounds – *specified value*; and
 - 4. General Dust – *specified value*.

Typical licence conditions #3

EPA can require that the licensee monitor the amount of dust produced

EPA can require information relating to monitoring or testing be provided to the EPA

S124 – general criminal defence

- If the defendant can prove that the alleged offence *did not result from any failure on the defendant's part to take all reasonable and practicable measures* to prevent the commission of the offence or offences of the same or a similar nature. .

But the defendant must also show that

- (a) that proper systems and procedures were also in place – that required prompt reporting
- (b) that the defendant actively and effectively promoted and enforced compliance with this Act and with all such systems and procedures within all relevant areas of the workforce.

Public Health Legislation

Public and Environmental Health Act 1987

Power to abate an insanitary condition (which includes a risk to health)

South Australian Public Health Bill 2009

A general duty not to harm public health

52— The general public health duty

A person must take all reasonable steps to prevent or minimise any harm to public health caused by, or likely to be caused by, anything done or omitted to be done by the person.

Assessing whether there is a breach of the duty

In determining what is reasonable for the purposes of the ‘general public health duty’ regard must be had, amongst other things, to the objects of this Act, and to—

- (a) the potential impact of a failure to comply with the duty; and
- (b) any environmental, social, economic or practicable implications; and
- (c) any degrees of risk that may be involved; and
- (d) the nature, extent and duration of any harm