

Second Exposure Drafts - Regulations and Environment Reference Standard

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Introduction

On 16 December 2020 the Victorian Government released the:

- Second Exposure Draft – Environment Protection Regulations (**Environment Protection Regulations**)
- Second Exposure Draft – Environment Protection Transition Regulations (**Transitional Regulations**)
- Second Exposure Draft – Environmental Reference Standard (**Environmental Reference Standard**)

The *Second Exposure Drafts* represent the endorsed position of the Victorian Government.¹

No further public consultation will take place.

Final scrutiny by Ministers and certification by the Chief Parliamentary Council will now occur prior to submission to the Governor in Council for approval and publication in the Government Gazette.²

The *Second Exposure Drafts* are publicly available via the Environment Protection Authority's website.

www.epa.vic.gov.au/about-epa/laws/new-laws/subordinate-legislation

The *Second Exposure Drafts* are available now to allow the community more time to prepare prior to **commencement on 1 July 2021**.³

NOTE – This alert refers to the *Environment Protection Act 2017* (Vic) as proposed from 1 July 2021 incorporating amendments from the amending Acts of 2018 and 2019.

Concurrently, the Department of Environment, Land, Water and Planning (**DELWP**) and the Environment Protection Authority (**EPA**) have also released protocols (listed below) and guidelines.

- Protocol for calculating monetary benefits
- Protocol – Waste classification assessment protocol
- Protocol – Waste disposal categories

No other subordinate instruments have been released for public consultation as at the date of this alert.

The EPA has signalled the imminent release of compliance codes for public consultation regulating landfill siting, design, operation and rehabilitation.

Other subordinate instruments that may be released prior to the commencement date, include:

- compliance codes⁴
- position statements⁵
- determinations⁶

¹ 'Environment Protection regulations and standards – Response to public comment report' (2020) DELWP and EPA

² *Subordinate Legislation Act 1994* (Vic), ss 13 and 14

³ *Environment Protection Regulations*, r 3

⁴ *Environment Protection Act 2017* (Vic), s 100

⁵ *Environment Protection Act 2017* (Vic), s 105

⁶ *Environment Protection Act 2017* (Vic), s 36; *Environment Protection Regulations*, r 5

- obligations of managers of land or infrastructure⁷; and
- orders relating to environmentally hazardous substances⁸

Environment Protection Regulations

The Environment Protection Regulations:

- prescribe matters for the operation of the *Environment Protection Act 2017* (Vic); and
- transpose, in most instances with amendment, components from existing regulations, state environment protection policies, waste management policies, the *Environment Protection Act 1970* (Vic) and reference documents.

Table – New operative provisions

Environment Protection Regulations

Chapter 2 (Contaminated Land)

Chapter 6 (Environmental audits and financial assurances)

Chapter 9.1 (Public Register)

Chapter 2 (Contaminated Land) prescribes matters for determination of ‘contamination’ of ‘land’. The national standards adopted form part of the existing legislative framework for assessment of environmental contamination,⁹ although this is distinguishable for the proposed approach of defining a benchmark for notification and management.

Part 6.1 (Environmental audit system) provides codification of the increasing scope of functions that environmental auditors have been called on to perform. In part these matters transpose from guidelines which were not subordinate instruments.

Part 6.2 (Financial assurances) transposes matters from guides which were not subordinate legislation. This is a subtle although significant change.

Table – Existing provisions transposed

Current Repository	Subject	Environment Protection Regulations
<i>Environment Protection (Scheduled Premises) Regulations 2017</i>	Permission activities	Chapter 3 (rr 16 – 42) Schedule 1
<i>Environment Protection (Industrial Waste Resource) Regulations 2009</i>	Waste	Chapter 4 (rr 60 – 92) Schedule 6
‘Waste Codes’ (2016) IWRG 822.3	Waste Codes	Schedule 5
<i>Environment Protection (Fees) Regulations 2012</i>	Fees	Chapter 8 (rr 172 – 215) Schedule 11

⁷ *Environment Protection Act 2017* (Vic), s 156

⁸ *Environment Protection Act 2017* (Vic), s 154

⁹ *State Environment Protection Policy (Prevention and Management of Contamination of Land)* and *State Environment Protection Policy (Waters)*

Current Repository	Subject	Environment Protection Regulations
<i>Environment Protection Act 1970 – Schedule A</i>	Infringement Notice Offences	Chapter 7 Schedule 10
<i>State Environment Protection Policy (Air Quality Management)</i>	Class 1, 2 & 3 Indicators	Schedule 4
<i>Waste Management Policy (Siting, Design and Management of Landfills)</i>	Restricted areas landfills	Chapter 4 (r 101) Schedule 8
Best Practice Management – Siting, Design, Operation and Rehabilitation of Landfills – Table 6.1	Landfill Gas (Methane) Action Levels	Chapter 3 (r 20) Schedule 3
<i>State Environment Protection Policy (Waters)</i>	Non-aqueous phase liquids in groundwater	Chapter 2 (r 15)
<i>Industrial Waste Management (Control of Ozone-Depleting Substances)</i>	Methyl Bromide use	Chapter 5 (r 111)
Notifiable Chemical Order	CFCs	Chapter 5 (r 102)
<i>Environment Protection (Vehicle Emissions) Regulations 2013</i>	Motor Vehicle Exhaust and Noise and Petrol Vapour Pressure	Chapter 5 (rr 135 – 158) Schedule 9
<i>Environment Protection (Residential Noise) Regulations 2018</i>	Residential noise	Chapter 5 (rr 114 – 115)
<i>State Environment Protection Policy (Control of Noise from Public Premises) N-2</i>	Entertainment noise	Chapter 5 (rr 122 – 131)
<i>State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) N-1</i>	Industry noise	Chapter 5 (rr 116 – 121)
<i>Waste Management Policy (Used Packaging Materials)</i>	Plastic bags	Chapter 5 (rr 133 – 134)
<i>Environment Protection (Distribution of Landfill Levy) Regulations 2010</i>	Levy	Chapter 3 (rr 43 – 52)
<i>Environment Protection Act 1970 – Part IXB (Septic tank systems)</i>	Onsite wastewater management	Chapter 5 (rr 159 – 163)
<i>Waste Management Policy (Solid Fuel Heating)</i>	Solid fuel heaters	Chapter 5 (rr 109 – 110)
<i>Industrial Waste Management Policy (National Pollution Inventory)</i>	NPI – air emissions	Chapter 5 (rr 103 – 108)
<i>Waste Management Policy (Storage of Waste Tyres)</i>	Tyres	Schedule 2
<i>Environment Protection Act 1970 – Part VIIA (Litter and material that may become litter)</i>	Litter	Chapter 4 (rr 54 – 59)

Current Repository	Subject	Environment Protection Regulations
<i>Waste Management Policy (E-waste)</i>	E-waste	(rr 23, 29, 63, 224 and Schedule 1, Items 3 and 4)
<i>Industrial Waste Management Policy (Movement of Controlled Waste between States and Territories)</i>	Interstate movement of waste	Schedule 1, Items 17 and 18
<i>Waste Management Plan (Waste Acid Sulfate Soils)</i>	Acid sulfate soils	Schedule 1, item 79

The only regulations not transposed are the Regulations not transposed include *Environment Protection (Management of Tunnel Boring Machine Spoil) Regulations 2020*.

Contaminated land and notifiable contaminated land

Part 3.5 – (Duties relating to contaminated land) of the *Environment Protection Act 2017* (Vic)¹⁰ sets out the provisions governing contaminated land management in Victoria.

These provisions include definitions of ‘contaminated’ land¹¹ and ‘notifiable contamination’ of land.¹²

These definitions are to be read together with the definition of ‘land’, which includes both buildings or structures permanently affixed to land and groundwater.¹³

These definitions inform the *duty to notify of contaminated land*¹⁴ and the *duty to manage contaminated land*.¹⁵

The Environment Reference Standard provides a definition of ‘land environment’ which carries forward the previous elements of the definition of ‘land’ under the *Environment Protection Act 1970* (Vic) and *State Environment Protection Policy (Prevention and Management of Contamination of Land)* to include:

- soil, fill, rock, weathered rock and sand
- the vapour and liquids within the interstitial space in the unsaturated zone; and
- sub-aqueous sediment¹⁶

The Environment Protection Regulations prescribe ‘notifiable contamination’ of land separated into:

- soil¹⁷
- asbestos in or on soil¹⁸
- groundwater or surface water¹⁹; and

¹⁰ *Environment Protection Act 2017* (Vic), ss 35 – 42

¹¹ *Environment Protection Act 2017* (Vic), s 35(1)

¹² *Environment Protection Act 2017* (Vic), s 37

¹³ *Environment Protection Act 2017* (Vic), s 6

¹⁴ *Environment Protection Act 2017* (Vic), s 40

¹⁵ *Environment Protection Act 2017* (Vic), s 39

¹⁶ *Environmental Reference Standard*, cl 4

¹⁷ *Environment Protection Regulations*, r 8

¹⁸ *Environment Protection Regulations*, r 9

¹⁹ *Environment Protection Regulations*, r 10

- vapours²⁰

The only change from the Exposure Draft released on 2 September 2019 is the deletion of 'HSL – Health Screening Levels' for soil criteria so that the definition is confined to 'HIL – Health Investigation Levels'. HSL's continue in relation to vapours.

Each prescribed '*notifiable contamination*' of '*land*' is further broken down into categories with varying criteria adopting:

- National Environment Protection (Assessment of Site Contamination) Measure 1999, as amended 2013 – Volume 2, Schedule B1 – Guideline on Investigation Levels For Soil and Groundwater (**NEPM (ASC)**)
- Australian Drinking Water Guidelines Paper 6 – National Water Quality Management Strategy, published by the National Health and Medical Research Council, National Resource Management Ministerial Council, Commonwealth of Australia in 2011, as in force from time to time²¹
- Australian and New Zealand Guidelines for Fresh and Marine Water Quality, published by the Australian and New Zealand Governments and Australian State and Territory Governments in 2018, as in force from time to time²²

'Notifiable contamination' excludes any contaminant, waste or chemical substance not specified in section 6, Schedule B1 of the NEPM (ASC) where the cost to remediate is less than \$50,000.²³

Per-and poly-fluoroalkyl substances (**PFAS**) are not listed in the NEPM (ASC) as at the date of this alert.

For the purpose of the exemption to notify of contaminated land the *Environment Protection Regulations* prescribe any contaminant, waste or chemical substance not specified in section 6, Schedule B1 of the NEPM (ASC) unrelated to asbestos or non-aqueous phase liquid.²⁴

This means land contaminated with PFAS will be excluded from the duty to notify of contaminated land, until PFAS is adopted in Schedule B1 of the NEPM (ASC).

The duty to manage contaminated land²⁵ and the duty to notify of contaminated land²⁶ each apply to '*land under the management or control*' of an entity. The confines of these duties to '*land under the management or control*' of an entity is important.

Prescribed '*notifiable contamination*' of '*land*' for soil addresses three categories:²⁷

- 1 soil contamination on '*land under the management or control*' where a person has been exposed or is likely to be exposed to contamination and the concentration of the contaminant is or likely remain above the average threshold for that contaminant or localised elevated values²⁸
- 2 soil contamination on land adjacent to the '*land under the management or control*' where the contamination has entered from the '*land under the management or control*' and the contamination exceeds the average threshold for contaminants or localised elevated values²⁹

²⁰ *Environment Protection Regulations*, r 11

²¹ *Environment Protection Regulations*, r 10(4)

²² *Environment Protection Regulations*, r 10(4)

²³ *Environment Protection Act 2017*, s 37(b)

²⁴ *Environment Protection Regulations*, r 13(d)

²⁵ *Environment Protection Act 2017*, s 39

²⁶ *Environment Protection Act 2017*, s 40

²⁷ *Environment Protection Regulations*, r 8

²⁸ *Environment Protection Regulations*, r 8(a)

²⁹ *Environment Protection Regulations*, r 8(b)

3 identical to the circumstances above except where the contamination has not yet migrated but it is likely to migrate beyond 'land under the management or control'³⁰

The criteria for the categories of 'notifiable contamination' of 'land' from soil where 'contamination' has migrated offsite as compared to where it is likely to migrate off site are different with reference to threshold for contaminants and elevated localised values applying to the former, and reference to health investigation levels under the NEPM (ASC) applying to the latter.

Soil containing friable asbestos where human exposure to airborne fibres exceeding 0.01 fibres per millilitre by means of inhalation is prescribed 'notifiable contamination'.³¹

Prescribed 'notifiable contamination' of 'land' for soil contained on site adopts soil contaminant concentration criteria on which vapour intrusion with a 95% upper confidence limit of the health screening level under Section 6, Schedule B of the NEPM (ASC) is calculated.³²

Prescribed 'notifiable contamination' of 'land' for surface water and groundwater does not distinguish between the source of the contamination (onsite or offsite) and adopts the Australian Drinking Water Guidelines published by the National Health and Medical Research Council in 2011 and Australian and New Zealand Guidelines for Fresh and Marine Water Quality published by the Australian and New Zealand Governments and the Australian State and Territory Governments in 2018.

Prescribed 'notifiable contamination' of 'land' also extends to soil vapour specifying criteria for chlorinated compounds, soil vapour health screening levels, soil health screening levels and groundwater health screening levels, each divided on the basis of a 95% upper confidence limit across the arithmetic average of multiple samples or 250% on an individual soil vapour sample.

For each of these categories the contaminant concentration must remain on the land and a person has been or is likely to be exposed to the contaminant or any by-product.³³ This prescription distinguishes between circumstances where the exposure pathway is complete (ie basement levels of a building) and scenarios where the exposure pathway is incomplete (ie slab on ground building with groundwater contamination at depth).

The previous clean-up provisions under the *State Environment Protection Policy (Waters) 2018* requiring clean-up of non-aqueous phase liquids³⁴ are transposed requiring clean-up of non-aqueous phase liquid and if the source of the non-aqueous phase liquid is located on 'land under management or control' then removal of the source or control of the source.³⁵

Exemptions from a prescribed 'notifiable contamination' include:³⁶

- stockpile of industrial waste where authorised to receive that waste
- land contamination addressed by remedial notices under the *Environment Protection Act 1970 (Vic)* as at 1 July 2020 or revoked prior to that date where there was no material change in the condition of the land after the date the notice was revoked
- contamination of land identified in a certificate of environmental audit or a statement of environmental audit where no subsequent activity has caused contamination of the land; and
- contamination for particular contaminants not listed in schedule B1 of the NEPM (ASC) such as emerging contaminants

³⁰ *Environment Protection Regulations*, r 8(c)

³¹ *Environment Protection Regulations*, r 9

³² *Environment Protection Regulations*, r 12

³³ *Environment Protection Regulations*, r 11(2)

³⁴ *State Environment Protection Policy (Waters)*, cl 54

³⁵ *Environment Protection Regulations*, r 15

³⁶ *Environment Protection Regulations*, r 13

These are logical where the object of the duty to notify is to ensure the EPA maintains a complete database of contaminated land in Victoria. Exclusion of emerging contaminants appears to balance the difficulty in adopting criteria in advance of the National Environment Protection Council. EPA is likely to adopt other interim measures such as remedial notices to ensure this information is captured until a uniform national position is adopted by the National Environment Protection Council.

Part 3.5 (Duties relating to contaminated land) provides for background levels of waste or substances to be declared by the EPA for the purpose of the duty to notify of contaminated land and the duty to manage contaminated land. A declaration may identify the standard or method to determine the standard of **naturally occurring** concentrations of waste or substances. For a determination to be operative the naturally occurring background would need to be above the criteria prescribed in the various National standards.

A determination³⁷ may be made by the EPA in relation to:

- onsite wastewater treatment plant
- 'authorised to receive industrial waste' for:
 - industrial waste³⁸
 - use of waste tyres³⁹
- declaration of use⁴⁰

The declaration instrument is proposed to be used broadly to regulate application and use of low risk wastes to or on land.

On 16 February 2021 the Victorian Government and the EPA released the '*Discussion Paper – Proposed waste and resource recovery determinations*' outlining the proposed role of determinations in the Recycling Victoria: a new economy (2020). Determinations are proposed for:

- solid processed organic waste
- manures, animal wastewater and effluent
- fill material; and
- aggregates

Submissions close at 5pm on **4 March 2021**.⁴¹

The duty to notify of contaminated land⁴² applies to a person in management or control of '*land*' to disclose to the extent of the persons knowledge or possession information⁴³ including:

- location of the land
- activity resulting or suspected of resulting in the contamination
- the nature and extent of the contamination
- the nature and risk of harm to human health and the environment from the contamination; and
- the management response or proposed management response to the notifiable contamination

³⁷ *Environment Protection Regulations*, 5

³⁸ *Environment Protection Regulations*, r 63(b)

³⁹ *Environment Protection Regulations*, r 63(j)

⁴⁰ *Environment Protection Regulations*, r 64

⁴¹ www.engage.vic.gov.au/waste-and-resource-recovery-determinations

⁴² *Environment Protection Act 2017* (Vic), s 41(2)

⁴³ *Environment Protection Regulations*, r 14

No information on how the notification of contaminated land will be recorded by the EPA, how the information will be maintained, whether it will be publicly disclosed or searchable by payment of a fee (similar to the Priority Sites Register) and whether there is an ongoing duty to disclose updated information as monitoring, remediation and site works are undertaken.

The *Independent Inquiry into the Environment Protection Authority* recommended that:

“The Department of Environment, Land, Water and Planning develop a comprehensive state-wide database of sites that pose a high risk to the community because of their past use, which should link to other relevant government data sources including information held by the EPA.”⁴⁴

Anything short of a database for no fee would appear to fall short of the Independent Inquiry’s recommendation and represent a poor outcome in terms of public awareness and protection of human health where knowledge is the critical foundation from which proportionate measures may be imposed.

A database accessible only by the EPA, such as the current ‘Interaction Portal’ for remedial notices denies access to information within a reasonable period. Current requests are directed through freedom of information delaying access to important information by months.

Maintenance of notifications of contaminated land in a similar way would compromise the outcome recommended by the Independent Inquiry and supported by the Andrews Government.⁴⁵

Identification and disclosure of closed landfills in Victoria is an example where current mechanisms provide incomplete information that importantly is not required in a vendors statement under the *Sale of Land Act 1962* (Vic).

The Environment Protection Regulations prescribe no matters in relation to the privilege against self-incrimination in disclosing contamination of land.⁴⁶

Public Register

The EPA must keep information on a public register⁴⁷ including:

- enforceable undertakings
- licences
- permits
- registrations
- exemptions
- site management orders
- final determinations of matters under the *Environment Protection Act 2017* (Vic)
- preliminary risk screen assessment statements
- environmental audit statements
- advisory panel documents
- better environment plans documents
- compliance codes
- position statements

⁴⁴ Independent Inquiry into the Environment Protection Authority (2016), pg XXV, ch 14, recommendation 14.1

⁴⁵ Andrews Labor Government Response to the Independent Inquiry into the Environment Protection Authority (17 January 2017), pg 21

⁴⁶ *Environment Protection Act 2017* (Vic), s 42

⁴⁷ *Environment Protection Act 2017* (Vic), s 456

- guidelines

In addition the *Environment Protection Regulations* prescribe⁴⁸ the following to be maintained:

- authorisation for emergency storage
- appointment, reappointment of an environmental auditor
- appointment of analysts or other prescribed roles
- alternate electronic system for recording transactions of reportable priority waste
- designations of waste classification or mixing, blending or diluting of priority waste

Notifiable contaminated land is not provided for in the public register provisions.

Permissions

Chapter 4 (Permissions) of the *Environment Protection Act 2017* (Vic) provides that prescribed activities⁴⁹ will be controlled by development licences,⁵⁰ operating licences,⁵¹ permits⁵² and registrations.⁵³

Permits and registrations extend the types of prescribed activities previously identified and regulated as scheduled premises. Permits and registrations each have a maximum duration of 5 years unless prescribed by regulation. The *Environment Protection Regulations* prescribe varying durations from 1 year, 3 years or 5 years for various prescribed activities requiring a permit.⁵⁴

Operating licences under the *Environment Protection Act 2017* (Vic) will expire. This is a significant change from the existing legislation.

A maximum duration of 20 years will apply to all operating licences other than a waste management activity (landfill, transfer station, composting facility, storage of solid waste of a resource recovery facility) carried out at a landfill or closed landfill then a maximum duration of 99 years will apply.⁵⁵

Transitional provisions provide that old permissions will transition to new permissions from the commencement date.⁵⁶

The EPA may within 12 months amended the new permission to ensure the conditions are consistent with the kinds of conditions that may be imposed under the *Environment Protection Act 2017* (Vic).⁵⁷ This includes an expiry condition.

No appeal rights to the Victorian Civil and Administrative Tribunal exist to review the EPA's decision.⁵⁸

Where an amendment is made to a transitioned operating licence the licensee may request a 6 month period in order to comply.

This limited duration substantially undermines the business case for the investment in infrastructure and ongoing operations.

⁴⁸ *Environment Protection Regulations*, r 216

⁴⁹ *Environment Protection Regulations*, schedule 1

⁵⁰ *Environment Protection Act 2017* (Vic), s 44

⁵¹ *Environment Protection Act 2017* (Vic), s 45

⁵² *Environment Protection Act 2017* (Vic), s 46

⁵³ *Environment Protection Act 2017* (Vic), s 47

⁵⁴ *Environment Protection Regulations*, r 30

⁵⁵ *Environment Protection Act 2017* (Vic), s 75(2)

⁵⁶ *Environment Protection Act 2017* (Vic), ss 470 – 473 and *Environment Protection Regulations*, r 219

⁵⁷ *Environment Protection Act 2017* (Vic), s 472(1)

⁵⁸ *Environment Protection Act 2017* (Vic), s 430

Provisions to ‘grandfather’ existing permissions have not been codified in the Environment Protection Regulations and remains at the discretion of the EPA without an avenue for review.

Permits issued under the *Environment Protection Act 2017* (Vic) all expire:

- interstate transport permits must not exceed 1 year in duration
- temporary onsite waste treatment permits must not exceed 3 years in duration; and
- permits for prescribed activities,⁵⁹ including A13b (Waste and resource recovery – medium) must not exceed 5 years in duration

This limited duration may impact investment in municipal infrastructure for the delivery of waste services providing community benefit.

Limited prescribed exemptions⁶⁰ appear generally consistent with the legislative framework.

The expansion of prescribed activities requiring permission, the expiry of that permission and the prescribed conditions requires careful examination.

Schedule 1 of the Environment Protection Regulations lays out in a table format consistent with schedule 1 of the *Environment Protection (Scheduled Premises) Regulations 2017* the activities which are prescribed as development activity, operating activity, permitted activity or registration activity.

Changes from the current regulations in relation to works approvals and licences, now translated to development licence and operating licence, together with the extension for permits and registrations are detailed in the Table below.

Table – New or changed activities

Prescribed Activity	Change
A02a (Other waste treatment – incineration)	Incineration including immobilising and thermally degrading or incinerating waste no longer has a 500tpa threshold. This threshold has been removed.
A02b (Other waste treatment – e-waste >500tpa)	Requires a development licence and operating licence.
A02c (Other waste treatment – e-waste 500tpa or less)	Requires a registration.
A05a (Landfills – excluding municipal landfills servicing <5,000 people)	Requires a development licence and operating licence after closure for an undefined period where the landfill closes after the commencement date.
A05b (Municipal landfills servicing <5,000 people)	Requires a development licence and permit.
A07a (Organic waste processing – large)	Excludes operations processing organic waste generated on site where the processed organic waste remains on site.

⁵⁹ *Environment Protection Regulations*, r 36

⁶⁰ *Environment Protection Regulations*, rr 37 – 42

Prescribed Activity	Change
A07b (Organic waste processing – small)	Creates a new prescribed activity below the previous threshold now requires a registration. Eliminates an existing competitive advantage for multiple rural locations operating below the current threshold.
A09b (Waste tyre storage – small)	Requires registration.
A10a (Reportable priority waste (transport) – high risk)	Requires a permit. Previously a under vehicle permit system.
A10b (Reportable priority waste (transport) – other)	Requires a permit. Previously a under vehicle permit system.
A11 (Transporting waste into Victoria)	Requires a permit. Previous permission by consignment under policy.
A12 (Transport waste out of Victoria)	Requires a permit. Previous permission by consignment under policy.
A13a, b and c (Waste and resource recovery – large, medium and small)	Large facilities require development licence and operating licence with tonnage thresholds expressed in receivables per month or total storage. Medium facilities require a development licence and permit. Small activities require registration.
A14 (Wastewater supply or use)	Requires a permit for supply or use of reclaimed wastewater unless an operating licence applies. This will capture reuse schemes operated by water corporations on private land or public land not under the control of the water corporation (eg public golf course).
A15 (Biosolids supply or use)	Requires a permit for the supply or use of biosolids other than on licensed premises for A03 (Sewage treatment). A permit is required. Replaces existing environment improvement plans for land application.
A16 (Supply or use of reportable priority waste)	Requires a permit. Together with 'declaration of uses' ⁶¹ this appears to replace the previous regime of direct beneficial reuse and secondary beneficial reuse.
A17 (Containment of Category D waste soil)	Requires a permit.

⁶¹ Environment Protection Regulations, r 63 and 64

Prescribed Activity	Change
A 18 (Discharge of waste to aquifer)	Requires a permit. Exclusions include remediation works and greenhouse geo-sequestration. This is likely to cover recharge schemes.
A19 (Temporary on-site waste treatment)	Requires a permit. This may include mobile incinerators, shredders and other sorting plant.
A20 (On-site waste water management systems)	Requires a permit, administered by Municipal Councils. Replaces previous septic tank permit scheme.
A21 (Temporary storage – biomedical waste)	Requires registration. Previously exempt.
A22 (Temporary storage of asbestos)	Requires registration. Allows temporary storage of not less than 10 cubic metres of double wrap non friable asbestos not generated at the premises for a period not more than 60 days. This is intended to facilitate utility and infrastructure managers responding to maintenance and emergency discharge scenarios for failed infrastructure with asbestos containing material.
A23 (Temporary storage – designated waste)	Requires registration. Allows temporary storage of not less than 1,000 litres or less of designated waste not generated at the premises for a period not more than 60 days.
B02a (Livestock saleyards or holding pens – waste solely to land)	Requires a permit.
E01 (Textiles)	Expanded from manufacturing 'and' processing of textiles to manufacturing 'or' processing of textiles.
F03 (Paper pulp mills)	Currently exempt from licensing if processing less than 30,000tpa. Will require an operating licence.
H05a (Glass works – manufacturing)	10,000tpa threshold removed so that all activities require a development licence and operating licence.
H05b (Glass works – large reprocessing)	Design capacity greater than 10,000tpa requires development licence and operating licence.
H05c (Glass works – small reprocessing)	Design capacity less than 10,000tpa requires registration.
I05 (Can and drum coating)	Operating licence exemption for emission of volatile organic compounds less than 100kg per day removed.
K01 (Power generation)	Exemption from licensing natural gas turbines with a capacity less than 20 megawatts is removed.

Prescribed Activity	Change
L04 (Contaminated site – Long-term containment)	Removed as a scheduled activity. It is anticipated that site management orders at s 275 of the Act will replace the permissions function.
L05 (Operation outside of hours)	Requires a permit for outdoor entertainment venues or events and the basis of noise emissions.
L06 (Conducting more than six outdoor concerts)	Requires a permit.
L07 (Dry cleaning)	Commercial dry cleaning activities now requires registration.
L08 (Receiving waste acid sulfate soil for treatment)	Receiving actual or potential acid sulfate soil for treatment or amelioration requires a registration.

An important reform for municipal councils and the Victorian Government as land owners is the expansion of the prescribed activity A05a (Landfills – excluding municipal landfills servicing < 5,000 people) to now include landfills after waste disposal has ceased (eg a future closed landfill).⁶²

This does not apply to landfills where the licence was surrendered prior to the commencement date (ie a closed landfill now).⁶³

Landfills closed after the commencement date will continue to be regulated under an operating licence with a financial assurance and will require a development licence for any buildings and works or development.

This is a substantial departure from the *Environment Protection Act 1970* (Vic) with consequences for end use master planning and divestment strategies by landfill operators and acquisition strategies for speculative development proposals of closed landfills.

This change may also impact strategic planning and statutory planning for closed landfills until presumably the operating licence expires.⁶⁴

Application for permissions

The *Environment Protection Regulations* prescribe matters that must be detailed in an application for any permission. Prescribed information, includes whether the applicant has been found guilty of an environmental offence, declared a bankrupt or insolvent and in this instance held property in a testamentary trust or previous held an environmental permission which has been suspended or cancelled.⁶⁵

The period for environmental offences under the *Environment Protection Act 1970* (Vic) is 10 years, whereas under the *Environment Protection Regulations* no time limit applies.

Whether an applicant has previously been bankrupt, insolvent or holds property in a testamentary trust is a new requirement likely directed towards the ability to recover funds in circumstances of abandonment of waste or contamination.

An application for a permission involving a wastewater discharge to surface waters in the special water catchment must be refused.⁶⁶

⁶² *Environment Protection Regulations*, schedule 1, item 7

⁶³ *Environment Protection Regulations*, schedule 1, item 7

⁶⁴ *Environment Protection Act 2017* (Vic), s 75(2)

⁶⁵ *Environment Protection Regulations*, r 17

⁶⁶ *Environment Protection Regulations*, r 19

Prescribed conditions for permissions relating to the landfills, include:⁶⁷

- take all reasonable measures to avoid exceedance of methane gas action levels detailed in schedule 3
- take all reasonable measures to avoid the depth of leachate in any landfill cell exceeding 300 mm above the base liner
- any landfill gas flare or thermal oxidising unit achieve 98% combustion of landfill gas; and
- landfills servicing 5,000 people or more must operate a weighbridge

Operation of a weighbridge is a new requirement that will impact some regional landfills.

Landfills that close after 1 July 2020 will require an operating licence and will be subject to these conditions.

This retrospective application of operating licence conditions to landfills will require careful consideration and a balanced approach where cell design and rehabilitation standards have increased over the operating period of the landfill.

The EPA may request further information. The application remains incomplete until that information is provided.⁶⁸ The consequence of this provision is that the statutory timeframe does not commence until the further information is supplied irrespective of the date of submission which is different to the existing situation where a notice requesting information merely stops the statutory time clock.⁶⁹

The referral agencies for development licence applications appear consistent with the *Environment Protection Act 1970* (Vic) in terms of:

- municipal councils in their capacity as a responsible authority
- for extractive industries the relevant Minister
- the Department of Health and Human Services for 'significant development licence applications' which is a defined term with significant public health implications; and
- any other agency the EPA considers appropriate in the circumstances⁷⁰

Referral agencies have 15 business days advice if permission is required under other legislation and 32 business days to provide other comments or information and to confirm if it:⁷¹

- supports the application
- does not object to the application; or
- objects to the application,

and

- any recommended conditions the referral authorities considers appropriate

The provision of recommended conditions is a change to the Exposure Draft released in September 2019.

An application for an operating licence for a landfill must be refused where the application seeks disposal of:⁷²

- liquid waste
- pneumatic tyres not shredded to a size less than 25mm

⁶⁷ *Environment Protection Regulations*, r 20

⁶⁸ *Environment Protection Regulations*, r 21(3)

⁶⁹ *Environment Protection Act 1970* (Vic), s 22

⁷⁰ *Environment Protection Regulations*, r 22

⁷¹ *Environment Protection Regulations*, r 22(3)

⁷² *Environment Protection Regulations*, r 23

- waste prohibited for disposal
- e-waste other than smoke detectors and e-waste dispersed in negligible quantities
- used oil filters; and
- 200 litre or greater containers contaminated with reportable priority waste

Waste categorisation, classification and thresholds

The *Environment Protection Act 2017* (Vic) continues the definition of 'waste' and 'municipal waste' and amends the definition of 'industrial waste' to include waste prescribed to be industrial waste for the purpose of this definition.⁷³

The *Environment Protection Regulations* expand the definition of 'industrial waste'⁷⁴ beyond waste arising from commercial, industrial or trade activities or laboratories to include:

- any waste received at a facility for resource recovery storage, transport, consignment or disposal; and
- any waste transported for fee or reward

The *Environment Protection Regulations* identify a subset of 'industrial waste' as 'priority waste'.⁷⁵ A further subset of 'industrial waste' and 'priority waste' is 'reportable priority waste'.⁷⁶

'Trade waste'⁷⁷ has the same meaning as the *Water Act 1989* (Vic) and the discharge of trade waste to sewer is identified as an 'authorised to receive industrial waste' activity, which is exempt from the prescribed activity permission provisions of the *Environment Protection Act 2017* (Vic).⁷⁸

While this resolves any prescribed activity permission requirement for the acceptance and discharge of industrial waste, priority waste or reportable priority waste, it is not clear if the producer of the industrial waste, priority waste or reportable priority waste remains liable to disclosing to the EPA the volume/tonnage discharged to sewer as 'trade waste' and any road transport requirements where the trade waste is transported by road tanker to the wastewater treatment plant as may occur in emergency scenarios and locations where a connection to sewer is not available.

This is a change from the existing legislative framework where 'trade waste' is excluded from the definition of 'prescribed industrial waste' by Schedule 2 of the *Environment Protection (Industrial Waste Resource) Regulations 2009*.

Clarification is required whether reporting and transport requirements will apply to transport of trade waste by road tanker.

The *Environment Protection Regulations* prescribe 'authorised to receive industrial waste'⁷⁹ to include:

- where there is a declaration of use
- industrial waste received in accordance with a determination
- trade waste
- manure and biodegradable bedding deposited to land at less than 20m³ per month
- reclaimed wastewater
- biosolids

⁷³ *Environment Protection Act 2017* (Vic), s 6

⁷⁴ *Environment Protection Regulations*, r 60 and *Environment Protection Act 2017* (Vic), s 6

⁷⁵ *Environment Protection Act 2017* (Vic), ss 6 and 138

⁷⁶ *Environment Protection Act 2017* (Vic), ss 6, 142 and 143

⁷⁷ *Environment Protection Regulations*, r 3 and 63(c)

⁷⁸ *Environment Protection Regulations*, r 63

⁷⁹ *Environment Protection Regulations*, r 63

- transport of reportable priority waste for A16 (Supply or use of reportable priority waste)
- receipt of less than 5m³ of industrial waste, excluding priority waste other than for disposal to land
- receipt of less than 5m³ of priority waste including:
 - saw dust from timber treated with hazardous material
 - tyres an pieces greater than 25mm
 - e-waste excluding batteries
 - waste tyres for use in A09b (Waste tyre storage – small)
 - receipt at laboratory for analysis
 - injection of greenhouse gas by sequestration; and
 - for lawful export

'*Authorised to receive industrial waste*' is in effect an exemption from the prescribed activity permissions and other provisions of the *Environment Protection Act 1970* (Vic).

The *Environment Protection Regulations* create waste codes including waste codes M270 (PFAS wastes) and T330 (Leachate from waste disposal) which are likely discharged to sewer across Victoria at site specific concentrations prescribed by customer specific acceptance criteria. The presence of PFAS in wastewater management facilities is a matter identified by the EPA in publication 1669.4 titled 'Interim Position Statement on PFAS' dated December 2020.

Priority waste that should also be considered in this context includes K410 (Septic tank waste). It is not clear if the intention is that this priority waste be tracked and reported by water corporations on the receipt of K410 at wastewater treatment plants.

Schedule 6 of the *Environment Protection Regulations* provide the categories of priority waste, including:

- Category A waste
- Category B waste
- Category C waste
- Category D waste (soil)
- soil containing asbestos only
- packaged asbestos

The Industrial Waste Guidelines (Government Gazette, 6 August 2009) adopt varying contaminants and contaminant concentration thresholds for soil and solid industrial waste. This presents scenarios of debate as to which criteria to apply in certain circumstances where the industrial waste is generated from a treatment process and the physical substance of the waste is derived from a soil product alum sludge for example.

EPA has released 'Waste disposal categories – characteristics and thresholds', publication 1828.1 dated June 2020 (**Characteristics and Thresholds**).

Characteristics and Thresholds dispenses with the distinction between soil and solid industrial waste by applying uniform contaminant concentration thresholds and leachability parameters for Category A, Category B and Category C industrial wastes, with contaminated soil a subset of each category.

An additional category, Category D (soil) is created. Category D (soil) does not apply to industrial waste other than soil.⁸⁰

⁸⁰ *Environment Protection Regulations*, schedule 6, definition of 'Category D Waste'

Industrial waste below the Category D (soil) contaminant concentration thresholds and leachability parameters where specified is characterised as *'fill material'*.

Industrial waste excluding soil, beneath the Category C contaminant concentration thresholds and leachability parameters constitutes *'industrial waste'*.

Table 2 of the Characteristics and Thresholds merges all contaminants from both the soil and solid industrial waste tables to apply a complete suite of 69 contaminants.

Contaminants deleted from the Characteristics and Thresholds first released in September 2019 include:

- Tin
- Monocyclic aromatic hydrocarbons
- Perfluorooctadecyl sulfonate (PFOS) and perfluorohexane sulfonate (PFHxS)
- Perfluorooctanoic acid (PFOA)
- PBDE Flame Retardants (Br1-Br9)

Note that PFAS remains a new waste code in Schedule 5 of the *Environment Protection Regulations – M270*.

Table 2 makes no distinction that Category D applies to soil only, leaving the reader under the misapprehension that Category D (soil) also applies to industrial waste excluding soil. This is incorrect.

Table 2 has removed the upper limit for industrial waste with the result that any industrial waste with a concentration lower than the upper limit for Category C for any of the 69 contaminants is a Category C priority waste.

The upper limits for industrial waste have been omitted, which noting that upper limits for fill material are provided in Table 3, would appear to be deliberate.

This will substantially increase the industrial waste other than soil categorised as Category C priority waste, which attracts the waste levy.

The financial implication of this change is not disclosed in the regulatory impact statement.

Upper limits for 25 contaminants total concentration for soil classified as *'fill material'* are listed in Table 3 and are identical to the existing Industrial Waste Guidelines (Government Gazette, 6 August 2009).

Upper limits are not prescribed for the remaining 44 contaminants with a similar consequence that any concentration of those contaminants classifies the soil as Category C priority waste.

Again the financial implication of this change is not disclosed in the regulatory impact statement.

Waste codes

A significant area of reform is the classification, tracking, management, recycling, recovery, reuse, waste to energy and disposal of waste in Victoria.

This reform responds to Victoria's worst known illegal dumping and stockpiling at warehouses across the northern and western suburbs of Melbourne, fires at some of those facilities and illegal dumping in Western district of Victorian near Kaniva.

The waste tracking and reporting system is expanded to *'industrial waste'* with a subset identified as *'priority waste'* and a further subset as *'reportable priority waste'*.

Waste codes will now be codified and apply to all industrial waste.⁸¹

The introduction of waste codes for *'industrial waste'* will be utilised in permissions, creating tracking and reporting obligations.

⁸¹ *Environment Protection Regulations, schedule 5*

All waste codes are now identified as either a 'Mirror Code' or a 'Pre-classified Code'.

The Waste classification and assessment protocol' publication 1827.1 dated June 2020 provides that a 'Mirror Code' is a code that has been split into two components – a 'hazardous' component denoted by "- H" and a 'non-hazardous' component denoted by "NH". This requires an evaluation or assessment of the industrial waste by the duty holder to select the correct code.

For example:

T130 – H (Item 103)

Sludges or slurries including drilling muds containing hazardous substances including priority waste.

T130 – NH (Item 104)

Sludges or slurries, including drilling muds other than item 103 in this Table.

Pre-classified Codes require no evaluation and have been set by the EPA irrespective of contaminant levels.

Industrial Waste Guideline 822.3 titled 'Waste Codes' dated November 2016 details the existing waste codes for prescribed industrial waste.

Set out below are the changes to these waste codes proposed to apply to priority waste, including reportable priority waste, waste codes that have been deleted and waste codes that have been inserted for priority waste, including reportable priority waste.

Table

Waste Code	Waste Description	Change
A100	Cyanide from surface treatment	Subset of previous code A100
A110	Cyanide from heat treatment	Subset of previous code A100
A130	Cyanide inorganic	Subset of previous code A100
N/A	<i>Equipment and articles containing mercury</i>	<i>Not translated – previous code D121</i>
N/A	<i>Cannery waste containing chromium</i>	<i>Not translated – previous code D141</i>
N/A	<i>Waste containing silver from photographic chemicals</i>	<i>Not translated – previous code D261</i>
D250	Tellurium	Added, rare earth metal used in manufacture of solar panels and computer hardware
D270	Vanadium	Added, metal used in steel manufacturing, lithium batteries and catalyst for sulphuric acid manufacturer
D340	Perchlorates	Added, salts used for food packaging
D350	Chlorates	Salts used in food processing and fireworks
N/A	<i>Highly reactive chemicals</i>	<i>Not translated – previous code E130</i>
N/A	<i>Explosive waste</i>	<i>Previous code E120, now T200</i>
N/A	<i>Dry cleaning wastes</i>	<i>Not translated – previous code G130</i>

Waste Code	Waste Description	Change
H120	Organochlorine pesticides	Added for agricultural and domestic application
N/A	<i>Mixed pesticide residue</i>	<i>Not translated – previous code H160</i>
H170	Waste from wood preserving	Expanded waste code H170 beyond copper chrome arsenic
N/A	<i>Waste hydrocarbons</i>	<i>Not translated – previous code J110</i>
N/A	<i>Transformer fluid</i>	<i>Not translated – previous code J140</i>
N/A	<i>Cutting oils and soluble oils</i>	<i>Not translated – previous code J150</i>
K110	Grease trap waste	Modified code previously K120
K190	Wool scouring	Added
K310 – H	Timber treated with hazardous substances including sawdust	Added, addresses copper chrome arsenic and other treated timber. Significant for construction and demolition waste and resource recovery operations
K400 – H	Treated sewage, solids and sludge that does not meet permit conditions (A15 – biosolids supply)	Added
K400 – NH	Biosolids that satisfy permit conditions (A15 – bio solids supply or reuse)	Added
K410	Septic tank	Added, diffuse source typically discharged to water corporations
N/A	<i>Solvents containing PCBs less than 50mg/kg</i>	<i>Not translated – previous code M110</i>
L200 – H	Industrial wastewater excluding sewage	Previously L150
L200 – NH	Industrial wastewater excluding sewage	Previously L150
M170	Polychlorinated dibenzo-furan	Added
M180	Polychlorinated-p-dioxin	Added
M210	Cyanides	Added
M270	Per- and poly-fluoroalkl substances (PFAS)	Added
N120	Soils contaminated with hazardous substances including asbestos and priority wastes	Consolidation of previous codes N119 (Category A), N120 (Category B) and N121 (Category C)
N123	Waste acid sulfate soils	Added

Waste Code	Waste Description	Change
N160	Encapsulating chemically fixed, solidified or polymerised hazardous waste	Consolidation of N160, N170 and N180
N205	Residues from treatment and disposal including digestate, bottom ash and char	Added
N/A	<i>Ion exchange column residue</i>	<i>Not translated – previous code N200</i>
N/A	<i>Industrial waste contaminated with prescribed waste</i>	<i>Not translated – previous N260</i>
N/A	<i>Pathogenic substances and quarantine waste</i>	<i>Previous R110, now T340</i>
T130	Sludges, slurries, drilling muds	Split into H (Hazardous) and NH (Non Hazardous) both priority wastes
T140	Tyres	Added priority waste
T141	Tyres shredded less than 250 mm	Added priority waste
N/A	<i>Foundry sands</i>	<i>Not translated – previous code T160</i>
T170	Household chemicals consolidated under Victorian Government program	Amended to household origin only whereas previously included any origin ie farmers
T200	Explosive waste not regulated	Amended, previously E120
T300	E-waste	Added
T320	Shredder flock	Added, residual from metal recycling
T330	Leachate from waste treatment and disposal operations	Added, landfills and other waste treatment and disposal activities
T340	Quarantine and biosecurity waste	Translated, previously R110

Set out below are waste codes introduced for 'industrial waste'. Waste codes do not currently apply to industrial waste under the Current Act.

Table

Waste Code	Waste Description
K210	Solid commercial food waste
K220	Manure and biodegradable animal bedding including mixture
K230	Process solid organic waste satisfying EPA specification
K300	Commercial garden and landscaping organics do not contain physical or chemical contamination
K310 – NH	Untreated timber including sawdust

Waste Code	Waste Description
N122	Excavated material, engineered fill including fill material
T325	End of life vehicles
X100	Textiles
X200	Leather and rubber other than tyres
Y100	Concrete
Y110	Bricks
Y120	Rubble including non-hazardous foundry sands
Y130	Plasterboard and cement sheeting
Y140	Asphalt
Z100	Glass
Z300	Steel
Z310	Aluminium
Z320	Non-ferrous metals other than aluminium
Z400	Cardboard
Z410	Liquid paperboard
Z420	Newsprint and magazines
Z430	Office paper
Z500	Plastics PIC #1 – #7

Many of these forms of industrial waste have been subject to voluntary reporting requirements for Federal programs, however these appear to be new obligations in Victoria and reporting to the EPA will likely become apparent through permissions.

PFAS is now captured although the contaminants have not been added to the Categorisation and Thresholds.

Material of an inert nature captured for recycling from both construction and demolition and commercial and industrial sources will now be tracked and reported.

Financial Assurance

Part 8.4 (Financial assurances) of the *Environment Protection Act 2017 (Vic)*⁸² sets out provisions regulating the provision of financial assurance from the commencement date. This has consistently been and will remain a contentious aspect of regulation for duty holders.

⁸² *Environment Protection Act 2017 (Vic)*, ss 218 – 234

Financial assurance may be required for:⁸³

- a permission for a prescribed activity
- a site management order (applies ongoing requirements of environmental audits)
- an environmental action notice;⁸⁴ and
- an order relating to environmentally hazardous substances⁸⁵ (none published to date)

The Environment Protection Regulations require a financial assurance for the following prescribed activities:

- item 1 (A01 – Reportable priority waste management)
- item 7 (A05a – Landfills – excluding municipal landfills servicing <500 people)
- item 19 (A13a – Waste and resource recovery – large)
- item 20 (A13b – Waste and resource recovery – medium)
- item 54 (G04 – Bulk storage)
- item 74 (L02 – Contaminated sites – on-site soil contamination)

This is a significant change for waste and resource recovery facilities, which may have flow on impacts for industry reliant on these facilities, particularly in regional Victoria.

This change is likely to have ramifications for Regional Waste and Resource Recovery Implementation Plans, the State-wide Waste and Resource Recovery Infrastructure Plan and the future Victorian Recycling Infrastructure Plan.

Financial assurance will no longer be required for prescribed activities G05 – (Container washing).

The Environment Protection Regulations prescribe risk assessment criteria for the purpose of the EPA determining a financial assurance. The criteria include:⁸⁶

- risk of potential harm to human health from activity and its location
- compliance with environment protection legislation, including any officer of a corporation individually
- whether a prohibited person
- financial capacity of entity undertaking activity
- ongoing profitability of activity and value of investment
- nature, extent and duration of clean up

Assessing the financial capacity and ongoing profitability of an activity are new matters for the EPA's consideration. No further information is available on how these risk assessment criteria will be examined.

Environmental audits

The *Environment Protection Regulations* introduce provisions allowing the EPA to prescribe functions of environmental audits. This will regularise what is already an existing practice that in some instances sits awkwardly with Part IXD of the *Environment Protection Act 1970* (Vic).

⁸³ *Environment Protection Act 2017* (Vic), s 219

⁸⁴ *Environment Protection Act 2017* (Vic), s 274

⁸⁵ *Environment Protection Act 2017* (Vic), s 154 (part 7.2 – environmentally hazardous substances)

⁸⁶ *Environment Protection Regulations*, r 168

The expanded role of environmental audits will be significant noting:⁸⁷

- verification of matters required by:
 - improvement notices, prohibition notices, notices to investigate⁸⁸
 - site management orders⁸⁹
 - permissions;⁹⁰ and
 - guidelines published by the EPA
- independent assessment of financial assurance⁹¹
- any function under a legislative instrument (ie Order, Compliance Code, Standard, Regulation etc); and
- any function approved by the EPA under the Environment Protection Regulations (must be published in the Victorian Government Gazette)

The final provision above allows the EPA to expand the functions of auditors without the process of amending an Act of Parliament.

This will have significant consequences for duty holders in terms of operational costs (and on auditor recommendations capital costs), budget estimates and forward planning to schedule works.

The availability of auditors will be a significant constraint for some duty holders and this may become exacerbated with the EPA's continued move toward rotating auditors through functions to prevent the same auditor performing periodic audits on a facility over an extended period.

Infringement Notices – fine by administrative EPA decision

Schedule 10 of the Environment Protection Regulations list offences for which the EPA may issue infringement notices imposing a financial penalty by an administrative decision.⁹² Failure to pay the infringement notice activates a discretion of the EPA to withdraw an infringement notice and commence proceedings in court.

The breadth of offences for which an infringement notice may be issued have increased with penalties ranging up to 50 penalty units. The penalty unit amount from the commencement date has not yet been set. As at the date of this alert the value of a penalty unit is \$166.22.

Notably infringement notices are not available for offences relating to breach of duty. Any of the breaches of duty concerning wastes, contaminated land or the general environmental duty may only be actioned by the prosecution.

Environment Reference Standard

The Environment Reference Standard translates components of the existing state environment protection policies setting out environmental values of the ambient air, acoustic, land and water environments in Victoria which are the objectives to be achieved by the legislative framework and various instruments.

There appears no change to the content relating to the land environment and water environment (groundwater, surface water – freshwater and marine).

⁸⁷ *Environment Protection Regulations*, rr 164 and 165

⁸⁸ *Environment Protection Act 2017* (Vic), ss 271 – 273

⁸⁹ *Environment Protection Act 2017* (Vic), s 275

⁹⁰ *Environment Protection Act 2017* (Vic), ch 4

⁹¹ *Environment Protection Act 2017* (Vic), s 222

⁹² *Environment Protection Regulations*, r 169 and schedule 10

This is sensible noting the *State Environment Protection Policy (Waters)* was introduced in 2018 and the *State Environment Protection Policy (Prevention and Management of Contamination of Land)* has been subject to continual review and scrutiny as part of the environmental audit system.

In relation to the ambient air environment the indicators and objectives remain consistent with the *State Environment Protection Policy (Ambient Air Quality)* with the exception that particles as PM_{2.5} (maximum concentration) are inserted and a qualitative indicator for odour with the objective stated as:

*“An air environment that is free from offensive odours from commercial, industrial, trade or domestic activities”.*⁹³

This may be an unachievable objective noting there is no recognition of land zoning.

The Environment Protection Standard merges the noise subordinate legislation which currently adopts different processes for Metropolitan Melbourne and the balance of Victoria. Environmental values of the acoustic environment are defined together with land use categories for noise again drawing upon components of the previous framework. The protocol noise provides the detail of assessment methodologies criteria and parameters necessary to assess noise emissions in Victoria.

Transitional Regulations

The Transitional Regulations provide for a discrete and confined number of matters.

Prescribed industrial waste classifications have been issued to specific entities and/or specific premises. There is no public register of specific classifications and the number issued is not publicly available. The Transitional Regulations allow for specific prescribed industrial waste classifications to continue in force after the commencement date. These specific classifications will cease on 30 June 2023 or earlier if the classification expires or the EPA revokes the classification.

The Transitional Regulations also perform a similar function for motor vehicle testers appointed under the *Environment Protection Act 1970* (Vic) and certificates of compliance issued by approved testers for motor vehicles. These matters continue to apply under the *Environment Protection Act 2017* (Vic) until the Transitional Regulations are revoked on 30 June 2023.

The final component of the Transitional Regulations saves seven clauses of the *State Environment Protection Policy (Waters)* relating to subdivision and onsite wastewater management, domestic wastewater management plans, sewerage planning, infrastructure management for urban stormwater protection and irrigation, saline discharges and groundwater pumping, responsibilities of protection agencies for irrigation drains and pollutant load targets for marine and estuarine waters (Lake Wellington, Corner Inlet, Port Phillip Bay and Western Port).

Conclusion

This paper provides an overview of the major changes introduced by the Environment Protection Regulations, Transitional Regulations and Environment Reference Standard.

⁹³ *Environment Reference Standard*, Table 2.2

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