



EPA
VICTORIA



Remedial notice review policy

Publication 1926 June 2021

Publication 1926 June 2021

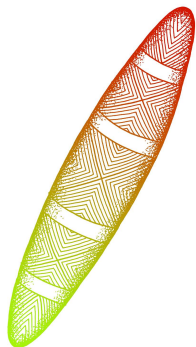
Authorised and published by EPA Victoria
Level 3, 200 Victoria Street, Carlton VIC 3053
1300 372 842 (1300 EPA VIC) epa.vic.gov.au

This publication is for general guidance only. You should obtain professional advice if you have any specific concern. EPA Victoria has made every reasonable effort to ensure accuracy at the time of publication.

This work is licensed under a [Creative Commons Attribution 4.0 licence](https://creativecommons.org/licenses/by/4.0/).

Give feedback about this publication online: epa.vic.gov.au/publication-feedback

This policy is intended to provide information on how EPA undertakes remedial notice review and is not a substitute for obtaining legal advice. If there are differences between the interpretation of the information in this policy and the law, the law will prevail.



EPA acknowledges Aboriginal people as the first peoples and Traditional custodians of the land and water on which we live, work and depend. We pay respect to Aboriginal Elders, past and present.

As Victoria's environmental regulator, we pay respect to how Country has been protected and cared for by Aboriginal people over many tens of thousands of years.

We acknowledge the unique spiritual and cultural significance of land, water and all that is in the environment to Traditional Owners, and recognise their continuing connection to, and aspirations for Country.



For languages other than English, please call **131 450**.

Visit epa.vic.gov.au/language-help for next steps.

If you need assistance because of a hearing or speech impairment, please visit relayservice.gov.au

Table of Contents

1. Purpose.....	4
1.1 EPA and the role of remedial notices	4
1.2 Remedial notices covered by this policy	4
1.3 Council-issued remedial notices.....	5
2. Who can apply for a review?	6
3. Applying for a review	6
3.1 Timeframes	6
3.2 Late lodgement.....	7
3.3 Invalid applications.....	7
3.4 Request to stay a remedial notice.....	8
4. How long does the review process take?.....	9
5. Review principles	9
5.1 Legislative context of reviewable decisions	9
5.2 Nature of the review	10
5.3 General conduct.....	11
5.4 Continuous improvement.....	12
6. Stages of EPA review process.....	13
6.1 Assessing a 'stay' request.....	13
6.2 Conducting the review.....	13
6.3 Document and communicate decision.....	15
7. Challenging an EPA review decision.....	16
8. Can I withdraw an application?.....	16
9. Applying for a 'stay' pending EPA's review.....	17
9.1 Right to be considered for a stay of the remedial notice	17
9.2 Considerations for assessing a stay request.....	17
9.3 Decision on a stay request	18
9.4 VCAT review on a refusal to grant a stay.....	19
10. Other matters regarding notices	19
10.1 Extending time in which to comply with a notice.....	19
10.2 Revocation upon complying with the requirements of a notice.....	20
10.3 Amendment of a notice requirement by EPA or a Council.....	20
10.4 Amendment of a notice requirement at the request of a notice recipient.....	20
11. Further information.....	21
12. References.....	22
13. Appendix: Summary of review rights under the EP Act.....	23

1. PURPOSE

1.1 EPA and the role of remedial notices

Environment Protection Authority Victoria (EPA) is Victoria's environmental regulator.

As an independent statutory authority under the *Environment Protection Act 2017* (EP Act), our role is to prevent and reduce harm from pollution and waste. We do this by:

- working with the community, industry and business to prevent and reduce the harmful impacts of pollution and waste on Victoria's environment and people
- taking proportionate regulatory action against those who fail to meet their obligations
- supporting all Victorians to understand their obligations under the law
- providing clear advice on the state of our environment so that people can make informed decisions about their health.

The EP Act assigns EPA the function of addressing non-compliance with duties and obligations and responding to risks of harm to human health and the environment. The key way for EPA to fulfil this function is through the issue of compliance advice and, where appropriate, "remedial notices". A remedial notice is a written, enforceable requirement on the notice recipient to undertake action as detailed in the notice. The objective of a remedial notice is to achieve a practical remedy for a risk of harm or to bring a duty holder into compliance with their obligations.

1.2 Remedial notices covered by this policy

From 1 July 2021, the following four remedial notices can be issued directly by Authorised Officers or in the name of the EPA under delegation:

- Improvement notice (s 271)
- Prohibition notice (s 272)
- Notice to investigate (s 273), and
- Environmental action notice (s 274).

In this policy, any reference to **remedial notices** means a reference only to these four notices.

Where one of these remedial notices is issued by an Authorised Officer, the recipient of the notice has a right to seek an independent review of that notice. The review must be completed by a person at EPA who was not involved in the Authorised Officer's decision to issue the notice.

This policy supports remedial notice review rights to ensure the consistent, constructive and effective use of these remedial notices. The policy:

- explains the review rights under the EP Act
- provides information to assist a notice recipient who is considering review of a remedial notice issued by an Authorised Officer, and
- describes EPA's remedial notice review process.

To maintain a high standard of conduct from our Authorised Officers, EPA will use the findings from its reviews to:

- inform operational policy
- help build EPA's capability in issuing effective remedial notices, and
- provide ongoing support for duty holders to understand and meet their compliance obligations.

This policy is intended to provide information on how EPA undertakes remedial notice review and is not a substitute for obtaining legal advice. If there are differences between the interpretation of the information in this policy and the law, the law will prevail.

This policy should be read in conjunction with the following EPA documents:

- Compliance and enforcement policy.
- Remedial powers policy.

1.3 Council-issued remedial notices

Councils (as defined by section 3 of the *Local Government Act 2020*) may also be delegated powers to issue certain remedial notices in relation to the management of on-site wastewater management systems (e.g. septic systems) and noise issues arising from residential construction activities. Such notices would be issued by Authorised Officers appointed under the EP Act through a delegation of those powers to the Council.

Notices issued by Council-appointed Authorised Officers may also be submitted for independent review by EPA and are intended to be covered by this policy.

2. WHO CAN APPLY FOR A REVIEW?

Any person who receives a remedial notice issued by an EPA or Council-appointed Authorised Officer under the EP Act, or where such an Authorised Officer amends an existing remedial notice under section 279(b), is eligible to seek a review of the decision to issue the notice, subject to meeting the criteria set out in the EP Act.

Only after the EPA review process has concluded may a notice recipient seek review at the Victorian Civil and Administrative Tribunal (VCAT).

3. APPLYING FOR A REVIEW

Under section 429(3) of the EP Act, an application for a review must be made in the manner and form required by EPA.

Applications are to be made online using the *Application for Internal Review of a Remedial Notice* form on EPA's website.

3.1 Timeframes

The right to request a review is limited by statutory timeframes.

A notice recipient has **10 business days** from the day after a remedial notice was served to make an application for review. A business day includes all Mondays to Fridays, except where a State public holiday applies. For example, if the notice recipient was served with a notice on Tuesday 4 November, the notice recipient must apply to EPA by Tuesday 18 November to ensure the application is valid for review.

The front page of a notice displays the date of issue rather than the date of service. It also displays the method of service. The date of service can be different from the date of issue where the method of service used affects when the notice recipient receives or is deemed to receive the notice. Section 344 of the EP Act describes the different ways in which a notice may be given or served, including the following:

- Electronic communication

Section 13A of the *Electronic Transactions (Victoria) Act 2000* sets out the circumstances for serving a notice by electronic communication (email) and when it is deemed to be received; the time of receipt is the time when the email becomes capable of being retrieved by the recipient at their email address.

- Delivered in person or left at the recipient's residential, business or body corporate address

Section 344 of the EP Act sets out the circumstances for serving a notice in person; the notice may be given or served personally on the notice recipient, or by leaving it at their usual or last known residential address or business address, or in the case of a company at the head office, registered office, or principal place of business. The notice is deemed to be served when it is given to or left for the notice recipient.

- Postal service

Section 49 of the *Interpretation of Legislation Act 1984* (Vic) sets out the circumstances for serving a notice by post and when it is deemed to be served; the notice is deemed to be served at the time when it would be delivered in the ordinary course of post.

3.2 Late lodgement

While applications for review that are received *after* 10 business days are not automatically precluded from consideration at review, it will be at EPA's discretion whether or not to conduct a review of such applications.

To assist EPA with exercising its discretion, a late application for review should provide an explanation for the delay in applying for review, including, as relevant:

- the reason why the review is sought, and the outcome sought (for example, does the applicant seek to challenge the substantive decision of the Authorised Officer, or simply seek additional time to comply with a notice)
- if the delay to seek review in time was due to something over which the applicant had no control
- what steps had been taken by the applicant to submit their review request in time
- why submitting a late application will not cause any prejudice, disadvantage or injustice to any person if EPA accepts the application out of time
- the length of time taken to lodge the application (for example, was the application only a few days late, or was it well outside the period) and whether the application was made before or after the compliance date set out in the notice.

In considering a late application, EPA will also consider the duration of the delay, whether the application was made before or after the compliance date set out in the notice and the view of the Authorised Officer who issued the notice.

3.3 Invalid applications

If the applicant does not submit an application in the manner and form required by EPA or where the application is materially deficient in one or more ways, then EPA will inform the applicant their application is invalid and that the subject matter cannot be determined by review.

An explanation of why the application is invalid will also be provided. Examples of invalid applications may include:

- an application by someone who was not the person, or not authorised by the person, who received the notice
- an application that seeks to review a decision which is not reviewable (e.g. is not a remedial notice and is not included in the EP Act's definition of decisions reviewable by EPA – see Appendix)
- an application that does not sufficiently identify what decision is being challenged, who is actually making the application, or is missing an important detail that makes it incapable of undergoing review

- an application relating solely to complaints about the behaviour of an Authorised Officer. Such matters can be raised through EPA's officer complaints review pathway.

3.4 Request to stay a remedial notice

A notice remains in force while EPA is reviewing that notice. An applicant may, at the time of requesting a review of the remedial notice, also request EPA to place the notice "on hold" until after the review has been completed (known as a *stay* of the original notice decision).

An applicant seeking a stay must provide sufficient reasoning for how this will not give rise to an unacceptable risk of harm. For example, the reasons may include an outline of any interim measures that have been, or will be, put in place to manage a risk of harm that would otherwise be addressed by fulfilling the notice requirements. See section 9 for more information on applying for a stay of a notice.

4. HOW LONG DOES THE REVIEW PROCESS TAKE?

EPA must advise a review applicant in writing of any decision made regarding a notice within 10 business days of the applicant seeking the review.

Reasons for any decision EPA makes on the notice must be provided to the applicant.

If EPA does not notify the applicant with a decision within 10 business days, then the EP Act deems that EPA has made a decision that *affirms* the notice (s 429 (7)). This means that after 10 days, even if the applicant has not heard from EPA, they must comply, or continue to comply, with the notice, including any directions or conditions contained in the notice, and note that any stay granted at the time of making the application will have lapsed. The applicant may also, at this stage, apply to VCAT to seek a review of the deemed decision of EPA to affirm the notice. See section 7 for further information on seeking review in VCAT.

5. REVIEW PRINCIPLES

EPA is committed to the principles of procedural fairness and will ensure that reviewable decisions are dealt with independently and fairly.

Requests for review are managed by the Internal Review Unit (IRU) in EPA. The assigned review officer must not have been involved in the original decision to issue the remedial notice for which review is being sought.

The IRU's purpose is to support:

- EPA to make evidence-based and effective decisions in accordance with the legislative objectives, principles and obligations of the EP Act
- EPA's assurance framework by identifying areas for continuous improvement and capability building of officers, using insights gained from engaging with duty holders on compliance matters.

5.1 Legislative context of reviewable decisions

The EP Act does not specify the grounds for reviewing a remedial notice, or the way in which a review is to be conducted. Three key parts of the EP Act set out below are intended to guide and assist the Internal Review Officer (IRO) when conducting a review.

Specific provisions	<p>The IRO will consider:</p> <ul style="list-style-type: none">• the provisions governing reviews in the EP Act• the provisions governing the type of remedial notice issued• any specific provisions cited in the remedial notice itself. <p>For example, improvement and prohibition notices may be based on an alleged contravention of a specific section of the EP Act or regulation.</p> <p>The IRO's review will not be limited to these provisions, but the provisions relied on by the Authorised Officer will be a consideration of the IRO's review.</p>
----------------------------	--

<p>EP Act objectives</p>	<p>The IRO will consider the objectives of the EP Act.</p> <p>EPA's primary objective under the EP Act is to protect human health and the environment by reducing the harmful effects of pollution and waste. It requires EPA to exercise its powers and perform its duties and functions for the purposes of achieving this primary objective.</p> <p>The EP Act also sets out additional objectives for the management of waste and recoverable materials to meet the primary objective of protecting human health and the environment, and support and encourage waste reduction and increase resource recovery from waste (Chapter 6).</p>
<p>EP Act Principles</p>	<p>The IRO will have regard to any relevant principles set out in Chapter 2 of the EP Act. The principles are intended to guide the administration of the EP Act and its regulations.</p>

5.2 Nature of the review

Remedial notice review is a rapid, informal, free of charge mechanism available to notice recipients that must be completed within strict statutory time limits.

While the EP Act does not specify the nature of review, the Victorian Court of Appeal and VCAT have considered review provisions under the *Occupational Health and Safety Act 2004* (OHS Act) that are similar to those under the EP Act. They indicated that such review provisions require a "merits review" be conducted.¹

The IRO will consider the material available to the Authorised Officer at the time the remedial notice was issued, and any relevant information available at the time of the review. Given the strict time frames in which the IRO must make their decision, they must also consider what information is feasible to examine in detail in the time allocated. The IRO is then required to decide, in the light of that material, whether the decision supporting the issue of the notice is the "correct or preferable" decision.

¹ *Victorian WorkCover Authority v AB Oxford Cold Storage Co P/L*¹⁴¹ (Court of Appeal, unreported 1 September 2006) at [14]; *Kone Elevators P/L v Victorian WorkCover Authority* (Occupational & Business Regulation) [2011] VCAT 2272 (2 December 2011)

“Correct or preferable” decision

When conducting a “merits review”, the IRO “steps into the shoes” of the Authorised Officer to make a new decision that replaces the AO’s original decision. This includes exercising the functions and powers of an Authorised Officer. One way in which the IRO can fulfil this review process is to consider if the AO’s decision was the “correct or preferable” decision.

A “correct” decision considers whether there is *only one way* to make that decision and whether the AO’s decision was lawful.

A “preferable” decision (which must also be a lawful decision) is one where there is *more than one option* in making the decision. The IRO considers whether in choosing an option, that the choice made was “preferable” and looks at matters such as the objectives of the legislation and public policy. For example, both an improvement notice and an environmental action notice may be options open to an AO to select from, however, one may be the *preferable* choice of notice to achieve the EP Act objectives in the circumstances.

The IRO will generally focus on the specific elements of the notice where the applicant raises concerns. Similarly, where a review is sought of an amendment made by the Authorised Officer on a notice that has already been issued, the IRO will generally only consider the aspects of the notice that have been amended.

While the IRO is not bound by rules of evidence in conducting a review, they must conduct the review within the principles of procedural fairness.

There is no statutory requirement for a hearing or face to face meeting with an applicant, and the strict time frames within which a decision must be reached and communicated to an applicant will often make such meetings impracticable. The IRO may, however, consider a meeting if it would be useful to the process. Otherwise, applicants should provide EPA with sufficient detail to support their claim at the time of their application.

5.3 General conduct

An IRO will be guided by the following principles of good decision-making when reviewing a decision:

Consistency	<p>An IRO will have regard to any relevant precedents, judicial interpretations and authoritative references when reaching a decision.</p> <p>The IRO will also consider the EPA’s policies, procedures and relevant position statements or guidance applicable at the time and relevant to the Authorised Officer’s decision to issue the notice.</p>
Relevance	<p>An IRO will take into account relevant matters in making a decision and will not take into account irrelevant matters.</p> <p>The IRO will assess the available information and determine which matters are relevant, their importance and their merit.</p>

<p>Bias and conflict of interest</p>	<p>An IRO may have regard to EPA documents to assist in consistent decision-making (such as policies and procedures, especially those applicable to Authorised Officers), but such documents will not be conclusive, or exhaustive of all relevant considerations.</p> <p>Placing undue weight on, or inflexibly applying such policies etc. may lead to administrative error (e.g. a failure to take into account other relevant considerations). The weighting of relevance placed on information is an important factor in the conduct of a "merits review".</p> <p>An IRO must conduct reviews in an unbiased manner. Bias will be assessed as to whether a fair-minded person might reasonably perceive or suspect the IRO had or might prejudge the matter, or not have an open mind when conducting the review.</p> <p>IROs are required to raise any potential conflict of interest which could make it inappropriate for them to conduct the review.</p> <p>Any issue of bias or conflict of interest will be referred to the IRU Manager who will consider the matter and, as appropriate, reallocate the review.</p>
<p>Independence of decision-making</p>	<p>An IRO exercising review powers must act independently and exercise their own judgment according to law. An IRO can have regard to EPA policies, procedures and relevant position statements or guidance, but they are not bound by these.</p> <p>An IRO cannot be directed by other officers of EPA or any other person on what decision to make in a particular case. In reaching a decision, however, an IRO can have regard to the views and opinions of other persons where the information is sufficiently relevant.</p>

5.4 Continuous improvement

EPA is committed to continuous improvement. Where appropriate the outcome of the internal review process will help inform improvements in EPA's administration of the EP Act.

6. STAGES OF EPA REVIEW PROCESS

6.1 Assessing a 'stay' request

A request to stay the operation of a remedial notice will be considered separately from the reviewable decision itself. Section 9 of this Policy sets out the process EPA uses to consider stay applications.

There is no statutory obligation for EPA to provide written notification of the outcome of the request for a stay. EPA, however, considers notification is an important aspect of transparency and accountability in the review process, and will provide a written explanation for any refusal to grant a stay, or where conditions are imposed on the grant of a stay.

If an applicant is not satisfied with EPA's decision to refuse to grant a stay, or with any conditions imposed on the grant of a stay, they may apply to have the decision reviewed by VCAT.

6.2 Conducting the review

6.2.1 Overview

Prior to reaching a review decision, the IRO will have regard to relevant information and the grounds for review relied upon by the applicant. Subject to statutory time limitations, the IRO may seek and obtain additional relevant information to assist in reaching a decision.

The IRO is required to take into account all relevant information and material available, and to decide what weight to attribute to such information when reaching a decision.

The IRO can have regard to the following information in making a decision:

- information provided in the application for review and any supporting documentation provided by the applicant
- information that was available at the time to the Authorised Officer who issued the notice
- any additional relevant information provided to or obtained by the IRO.

6.2.2 Information provided by the applicant

The IRO will consider all information provided by or on behalf of the applicant. As there is no discretion under the EP Act to extend the time in which a decision on a review must be made, it is important that an applicant provides all relevant information they want EPA to consider at the time of the initial application.

The IRO may, having regard to the statutory time limits, seek further information from the applicant to assist their decision-making process. This will likely involve specifying a deadline by which such information is to be supplied. If the applicant fails to provide the information requested by the specified time, or provides incomplete information, the IRO may decide the matter on the available information. The EP Act does not enable the time frame in which a decision must be made to be paused, even with the consent of the applicant. Any delay to the review of a remedial notice beyond the 10 business days will result in the notice being automatically affirmed under s 429(7).

When new or additional information is provided by an applicant, the IRO will determine the information's relevance to the review. If relevant new information is submitted in support of an application that was not provided to the Authorised Officer whose decision is under review, the IRO may provide that information to other persons, including the Authorised Officer, for the purposes of seeking an opinion.

6.2.3 Information available to EPA

In addition to information provided by the applicant, the IRO may consider, as relevant, any current and previous entry reports, notices and photographs, or additional information provided by the Authorised Officer who made the reviewable decision.

Use of other information sources will be guided by the scope of the review that has been requested by the applicant. From time to time, the IRO may consider databases maintained or accessible by EPA for information about the location of contaminated sites, waste transfer tracking, and compliance approaches implemented by comparable duty holders (such as Industry Codes of Practice, Australian Standards and guidance material published by EPA and other reputable sources). The IRO may also access internal experts in the areas of human health and environmental risk.

The IRO will consider this information to help them identify:

- reasons for the Authorised Officer attending the site or other relevant places
- previous visits to the site or other places considered relevant (and why)
- description of the site activities or operating environment
- description of the risks of harm to human health or the environment, including a description of the geography, location and/or physical subject matter as relevant
- the particular factual circumstances in which the reviewable decision was made (e.g. was there information available that was not considered by the Authorised Officer and if so, why not, time restrictions, level of risk etc.).

In addition, the IRO may discuss the review and any assertions made in the review with the issuing Authorised Officer to obtain his or her comments on such assertions.

An IRO may seek advice from persons external to EPA who have particular experience, knowledge or expertise in a relevant area which could assist in reaching a sound decision. In specific circumstances an IRO may, at their discretion, also attend the site subject to the remedial notice to directly obtain additional information.

Where appropriate, if additional information is obtained by the IRO that is likely to adversely affect the applicant's position, the IRO will make the applicant aware of the substance of the information or advice, and provide an opportunity for the applicant to comment on that information. The strict statutory time frames for the IRO to reach a decision means that any such opportunity will specify a deadline by which comment must be received to enable the IRO to take those views into account.

6.3 Document and communicate decision

The IRO makes one of four decisions in completing a review:

- to **affirm** the notice (i.e. the original notice reflects the “correct or preferable” decision)
- to **vary** the original decision in some way (i.e. amend the original notice)
- to **set aside** the decision entirely (revoke the original notice)
- to set aside the decision and **substitute** some other decision (e.g. revoke the original notice and issue a new notice(s)).

The applicant must be provided with reasons for the IRO decision at the completion of the review. The reasons for a decision will be provided in plain English and a form that enables an applicant to understand the IRO’s reasoning supporting their decision.

EPA is required to notify the applicant in writing of the review decision and reasons within 10 business days of the application for review having been made.

The correspondence accompanying EPA’s decision will also set out the right of the recipient to seek external review of the decision by VCAT.

In addition to providing an applicant with reasons for the decision, the IRU will communicate the reasons to relevant staff within EPA or Council, where the notice originated from a council Authorised Officer, to help promote continuous improvement in decision making. The reasoning provided by the IRO may also inform EPA procedures and policies to help maintain consistency and quality in EPA’s decision making.

If EPA does not make a decision or notify the applicant within the statutory timeframe of 10 business days then the EP Act deems EPA’s decision as affirming the notice (s.429 (7)).

7. CHALLENGING AN EPA REVIEW DECISION

If an applicant is not satisfied with the review decision, including where the notice is affirmed after 10 business days because EPA has not notified the applicant of a decision, then they have a further **15 business days** in which to make an application for VCAT to review the notice.

The process for applying to VCAT for a review of a notice can be found on VCAT's website at vcat.vic.gov.au/case-types/environment-and-resources.

Once a review is sought in VCAT, then EPA becomes the *respondent* to the application and the process of the review is governed by both section 430 of the EP Act and also the [Victorian Civil and Administrative Tribunal Act 1998](#).

The outcome of the VCAT process will be a new decision as issued by VCAT, which will be one of the following:

- affirm the IRO decision
- vary the IRO decision
- set aside the IRO decision with no new notice issued
- set aside the IRO decision and substitute it with a new notice or new notices, or
- set aside the decision and remit the matter to EPA for re-consideration in accordance with any directions or recommendations of VCAT.

8. CAN I WITHDRAW AN APPLICATION?

An applicant can seek to withdraw their application for review at any time by writing to EPA.

A person might do this for many reasons, including that they have complied with the notice under review in the meantime.

Acceptance of a request to withdrawal a review application will be at the discretion of the IRO.

9. APPLYING FOR A 'STAY' PENDING EPA'S REVIEW

9.1 Right to be considered for a stay of the remedial notice

The EP Act creates a right to request a stay of a remedial notice during an EPA review of a remedial notice (s 429(9)). Even if an applicant does not request a stay, EPA may, of its own initiative, stay the operation of a notice pending the review determination.

A stay request that is made at the time the applicant lodges the application for review of the notice must be determined by EPA within the timeframes set out in the EP Act:

- An application received **before 5 pm on a business day** gives EPA 48 hours, not inclusive of any non-business days that fall within the 48-hour period, to make its decision on the stay request.
- An application received **after 5 pm on a business day** or on any other day gives EPA until 5 pm on the second business day after the application was received, not inclusive of any non-business days that fall within the 48-hour period, to decide on the stay request.

A request for a stay that is received by EPA after the lodgement of the application for review of the notice, but before EPA has completed its review (a "late stay" application) may still be considered for a stay by EPA, at EPA's discretion.

9.2 Considerations for assessing a stay request

The EP Act does not specify grounds on which a stay might be granted or the way in which a stay request must be decided. Accordingly, each stay request will be determined by EPA on its merits.

The following considerations may guide an IRO in assessing a stay request and should be addressed, as relevant, in any application seeking a stay:

Impact of the notice	Granting a stay may help avoid undue adverse impacts on a person subject to a remedial notice while the decision is being reviewed by EPA. A request for a stay should identify the impact of the notice operating specifically <i>during the review period</i> .
Justification	<p>EPA will consider whether granting a stay would create an unacceptable risk of harm to human health of the environment, in accordance with the objectives and principles of the EP Act (see section 5.1). Considerations that may help the IRO assess the risks of harm include:</p> <ul style="list-style-type: none">• Would granting a stay serve to defeat the purpose that the remedial notice is seeking to achieve? For example, staying a prohibition notice may expose human health or the environment to an unacceptable risk of harm during the notice review period.• Will a failure to grant a stay result in changes which are not capable of being reversed at a later stage?• Who would suffer the greater prejudice or harm if the stay was not granted - the person seeking the stay, or the community/aspect of the environment protected by a remedial notice remaining in force? Would the impact of

the remedial notice remaining in force during the review adversely affect the applicant *disproportionately* to the risks addressed by the notice?

- What (if any) measures are proposed by the applicant to reduce any risks of harm to human health or the environment during the review period if a stay were to be granted?

9.3 Decision on a stay request

EPA can refuse to grant a stay of the remedial notice. If EPA decides it is appropriate to grant a stay, EPA can make the stay subject to any conditions that EPA considers appropriate.

If EPA does not notify an applicant requesting a stay of a remedial notice of its decision within the statutory timeframes, then EPA is taken to have made a decision to *grant the stay* under the EP Act.

9.3.1 Duration

If granted, a stay only applies until EPA completes its review of the decision concerned and ends automatically once the review determination is made, including where no decision is made and the original notice is affirmed under section 429(7).

EPA may consider it appropriate to grant a stay for a lesser or more specific period of time. This may be relevant where, for instance, the applicant satisfies EPA that the need for a stay is warranted to allow a particular activity to occur, and that some short-term relief on the operation of the notice is appropriate.

9.3.2 Specified conditions

EPA may decide to grant a stay subject to specific conditions. The nature of any such conditions will depend on the circumstances of the case, and they would usually be the subject of discussion between EPA, the notice recipient and the issuing Authorised Officer.

9.3.3 Reasons for the decision

EPA will provide the applicant with a written notification and explanation for any refusal to grant a stay, or where conditions are imposed on the grant of a stay.

Where it is impracticable for EPA to provide written reasons at the time of making a stay decision, the IRO will provide the reasons in the written notice documenting the decision from the review of the remedial notice.

9.4 VCAT review on a refusal to grant a stay

A decision by EPA to refuse to grant a stay, or to impose conditions on the grant of a stay, may be reviewed by VCAT if an applicant is not satisfied with EPA's decision. Conditions and criteria for a review are set out in the EP Act (Part 14.2).

During the VCAT review process there may be opportunities for EPA and the notice recipient to resolve the matters in dispute. If an agreement is reached, the parties can seek a consent order from VCAT (approving the decision agreed between EPA and the notice recipient). Alternatively, the notice recipient can seek leave from VCAT to withdraw their review application at VCAT.

10. OTHER MATTERS REGARDING NOTICES

Beyond the right to seek review of a remedial notice, section 279 of the EP Act sets out other considerations regarding remedial notices that will be important for a notice recipient to understand.

10.1 Extending time in which to comply with a notice

All remedial notices issued under the EP Act must specify the period in which the person receiving the notice is to comply with the requirements set out in the notice.

The compliance period for a remedial notice may form part of a review request, but it can also be considered outside of the review process under section 279(a) of the EP Act.

Under that section, EPA or a Council may extend the compliance period for a remedial notice if satisfied that the person's circumstances justify such an extension of time.

An extension of time request for an EPA-issued notice can be made online using the relevant application form on EPA's website and should set out:

- What actions have been taken to comply with the notice.
- What factors beyond the control of the applicant have caused or contributed, or will cause or contribute, to failure to satisfy the notice requirements by the specified date in the notice.

EPA assesses whether an extension of time is justified and, where appropriate, the notice will be updated to reflect the new time period in which compliance is required.

For Council-issued notices, a notice recipient should contact the issuing officer at the Council with any extension of time request.

An extension of time request is not an *amendment* of the notice within the meaning of the EP Act, and a notice recipient does not have a right under the EP Act to seek a review of the decision on whether to extend the compliance period. However, if the notice recipient is not satisfied with the decision, they may seek judicial review of the decision through an application to the Supreme Court of Victoria.

10.2 Revocation upon complying with the requirements of a notice

EPA or Council may revoke a notice under section 279(b) of the EP Act.

Normally, a notice will be revoked by EPA or a Council only once they are satisfied that the recipient has met all the requirements of the notice.

10.3 Amendment of a notice requirement by EPA or a Council

An EPA or a Council authorised officer may *amend* a requirement of a remedial notice under section 279(b) of the EP Act.

The objective of remedial notices is to ensure an appropriate practical remedy for risk of harm or to bring a duty holder into compliance. From time to time, it may be necessary to amend notice requirements to ensure the purpose of the notice is adequately achieved.

An amendment may be undertaken for various reasons, including where new information becomes available that materially changes the grounds and evidence upon which the notice was issued. For example, if EPA or a Council becomes aware that the risk of harm is more serious than was first understood.

Where the decision to amend a requirement of a notice is initiated by an Authorised Officer, the notice recipient has the right to seek a merits review of that amendment through EPA's remedial notice review process.

10.4 Amendment of a notice requirement at the request of a notice recipient

While there is no formal right outside of the review provisions in the EP Act for a notice recipient to seek an amendment to a notice, an Authorised Officer may, at their discretion, amend a notice requirement in response to a request from the notice recipient.

Where requested, an Authorised Officer will consider whether a proposed change to the requirement will result in greater levels of risk control, harm reduction or a better longer-term environmental outcome. In requesting the proposed change, the notice recipient would need to demonstrate how they will ensure they will meet their compliance obligations under the EP Act or their permission, or how they will address the risk of harm identified in the notice.

A request to amend a notice requirement will be considered if it is made at least 10 days before the specified compliance date for the notice. The notice recipient needs to contact the Authorised Officer who issued the notice to discuss the possibility of an amendment and provide any relevant information. It is at the discretion of the issuing officer whether to amend a notice requirement on the grounds proposed by the notice recipient.

If the issuing officer refuses the proposal, it will only be open to the notice recipient to seek judicial review of EPA's decision, and an application for such a review must be made in the Supreme Court of Victoria.

11. FURTHER INFORMATION

For further details on this policy, contact EPA Customer Service on 1300 EPA VIC (1300 372 842).

12. REFERENCES

Resource type	Title	Description	Publication
Policy	<i>Compliance and enforcement policy</i>	Outlines EPA's approach, method and priorities for ensuring compliance with our Acts and carrying out our compliance and enforcement powers.	EPA publication 1798
Policy	<i>Remedial powers policy</i>	Explains how EPA and its authorised officers (AOs) will use the remedial powers provided in the EP Act.	EPA publication 1813
Policy	<i>Officer complaints management policy</i>	Explains the officer conduct complaints management process.	EPA publication 1454

13. APPENDIX: SUMMARY OF REVIEW RIGHTS UNDER THE EP ACT

The EP Act makes it clear that a person has a legal obligation to comply with a remedial notice, but it also establishes review rights that enable a notice recipient to seek a review of certain remedial notices that are issued by an Authorised Officer under the EP Act.

The review options for each type of remedial notice is outlined in the following table. For more detail on remedial notice types please see EPA's *Remedial powers policy*.

Remedy type	EPA review	VCAT review	Supreme Court review (administrative law grounds)
Compliance advice	x	x	x
Authorised Officer-issued Improvement notice	✓	✓	✓
Improvement notice issued by an Authorised Officer from a Municipal Council	✓	✓	✓
Authorised Officer-issued Prohibition notice	✓	✓	✓
Prohibition notice issued by an Authorised Officer from a Municipal Council	✓	✓	✓
Authorised Officer-issued Notice to investigate	✓	✓	✓
Authorised Officer-issued Environmental action notice	✓	✓	✓
EPA-issued Improvement notice	x	✓	✓
EPA-issued Prohibition notice	x	✓	✓
EPA-issued Notice to investigate	x	✓	✓
EPA-issued Environmental action notice	x	✓	✓
Waste abatement notice	x	✓	✓
Site management order	x	✓	✓
Direction	x	x	✓
Cleanup powers	x	x	✓