

Guidance for operating licences

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Guidance for operating licences

Purpose

The purpose of this document is to outline:

- the standard content of EPA operating licences, for both new and existing licence holders
- how operating licences will differ compared with licences in the current legislative framework
- EPA's principles and approach for review of licence conditions.

This document is prepared solely for the purposes of consultation and advice in March 2020. It helps explain how licences under EPA's current legislation (*Environment Protection Act 1970*) will differ under the new legislation when the *Environment Protection Amendment Act 2018* is intended to take effect in July 2021.

Some of the content is expected to be translated into a revised edition of the [Licence management guidelines](#) (EPA publication 1322) and other guidance.

Contents

This document covers:

- the operating licence preamble and description of the operating licence
- standard conditions for risk management and monitoring, reporting and record keeping, notification and decommissioning
- approach for sectorial and site-specific conditions
- amended conditions
- consequential amendments to conditions.

It is complemented by a 'model permission' which shows the intended standard conditions and licence preamble.

Context change – permissions in a duties model

Holders of current licences are advised that with the introduction of the general environmental duty (GED) and other duties, the purpose and scope of their licence may change.

Previously, a range of standard conditions have been included in licences to specify requirements for the management of a variety of environmental risks. In the future, the GED and other duties in the *Environment Protection Act 2017* (Vic) (the Act) will require these risks to be understood and managed, which removes the need to specifically address these aspects in the licence. For example, general amenity conditions in relation to odour, dust and noise, and general waste management conditions, will no longer be specified in licences.

While there may be no licence conditions associated with these parameters in the future, there are still legislative requirements to ensure these risks are effectively managed under the GED and other duties.

Guidance on the obligations created by the duties will continue to be developed in preparation for commencement of the Act on 1 July 2021. Irrespective of the existence of new guidance or licence conditions, licence holders must be aware of and minimise the risks that their activities may pose to the environment and human health arising from pollution and waste. EPA will hold licence holders to account for breach of key legislative duties in the Act through EPA's compliance activities.

Part 1: Licence content

1. Licence preamble and description of the licence

All licences will contain a standard preamble on the provisions of the Act under which the licence is issued, and the broader legal context in which the licence exists.

The preamble emphasises that a range of duties and obligations regarding risk management and notification exist outside of the licence content, and that those entities holding a licence are expected to effectively address environmental and human health risk management.

Further guidance for licence holders will explain how to locate resources in relation to other obligations and duties. This will be provided at a later date.

The licence preamble provides information regarding EPA's power to issue the licence, and a reminder to licence holders to understand and apply the duties and other requirements of the new legislative framework.

In current licences, the description of the licence is a short statement usually describing the licensed activities which are to be undertaken on site and is not standardised across licences. This descriptive statement will be removed and will now only refer to the activity that is being regulated as described in the Environment Protection Regulations (second exposure draft). For example: "A03 (Sewage treatment)".

2. Standard conditions

Each licence will be subject to seven standard conditions. These are common to all licences and replace general standard conditions G1-5 used in existing licences issued under the *Environment Protection Act 1970* (Vic) (1970 Act).

These conditions establish legal obligations for licence holders to set up a framework for risk management, record keeping and reporting under the new legal framework. Whilst these conditions may appear to be similar to current conditions under the 1970 Act, it is important to recognise the different role and focus of these conditions under the new duties model. In effect, the conditions serve to support expected standards of conduct which are required to be adhered to under the GED.

Those licence holders running effective risk identification, management and notification processes may not need to implement significant changes in their processes arising from these conditions. However, where a licence holder's current focus is on pollution detection rather than risk reduction, changes in operations will be necessary, to meet the requirements of the new preventative framework.

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2.1. Risk management and monitoring condition

The following standard condition requiring a *risk management and monitoring program* (RMMP) to be developed will apply to all licence holders:

1. *You must develop a risk management and monitoring program for your activities which:*
 - a) *identifies all the risks of harm to human health and the environment which may arise from the activities you are engaging in at your activity site;*
 - b) *clearly defines your environmental performance objectives;*
 - c) *clearly defines your risk control performance objectives;*
 - d) *describes how the environmental and risk control performance objectives are being achieved;*
 - e) *identifies and describes how you will continue to eliminate or minimise the risks in (1.a) (above) so far as reasonably practicable (SFARP); and*
 - f) *describes how the information collated in compliance with this clause, is or will be disseminated, used or otherwise considered by you or any other entity.*
2. *The risk management and monitoring program must be:*
 - a) *documented in writing;*
 - b) *signed by a duly authorised officer of the licensed entity; and*
 - c) *made available to the Authority on request.*

This condition effectively replaces condition G5 of 1970 Act licences.

Environmental and human health risk assessment is fundamental to the general GED. Risk assessment and management will not be new to current licence holders. In alignment with the current G5 condition, licence holders should have already completed risk assessments, be actively managing their risks and have already implemented a monitoring program to ensure that the risk controls are delivering the intended outcome (environmental objectives).

All duty holders (irrespective of whether licensed) must also comply with all aspects of the GED under section 25 of the Act. Notably, under section 25(4), a person contravenes the GED if they fail to do any of the following in the course of conducting the business so far as reasonably practicable:

- (a) use and maintain plant, equipment, processes and systems in a manner that minimises risks of harm to human health and the environment from pollution and waste;
- (b) use and maintain systems for identification, assessment and control of risks of harm to human health and the environment from pollution and waste that may arise in connection with the activity, and for the evaluation of the effectiveness of controls;
- (c) use and maintain adequate systems to ensure that if a risk of harm to human health or the environment from pollution or waste were to eventuate, its harmful effects would be minimised;
- (d) ensure that all substances are handled, stored, used or transported in a manner that minimises risks of harm to human health and the environment from pollution and waste;
- (e) provide information, instruction, supervision and training to any person engaging in the activity to enable those persons to comply with the duty...

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The scope of the RMMP is not limited to the primary category of the licence or the conditions therein. Under the GED a commensurate approach to minimising all risks of harm to human health and the environment which may arise from any activity must be undertaken. For example, a site licensed for landfilling activities may also need to have appropriate risk identification and management controls in place for a range of other potential hazards which may arise from their activities. Licence holders should also take into account the cumulative risks their activities may present, for example air emissions which may occur from point sources such as stacks as well as the fugitive emissions from multiple diffuse sources. Duty holders may also need to take into consideration any historical activities previously undertaken and the impacts that may have resulted (for example legacy contamination of land).

EPA has published guidance to assist licence holders with risk assessment and to comply with their licence obligations: [Assessing and controlling risk: A guide for business](#) (EPA publication 1695), [Licence assessment guidelines: Guidelines for using a risk management approach to assess compliance with licence conditions](#) (EPA publication 1321) and [Licence management](#) (EPA publication 1322). These existing publications cover risk management approaches and information to support compliance with current licence conditions.

EPA is developing guidance which builds upon the above to assist licence holders in understanding some newer aspects introduced in the condition (such as performance objectives and so far as reasonably practicable – SFARP). Licence holders should initially refer to [Implementing the general environmental duty: a guide for licence holders](#) (draft EPA publication 1851) to gain a better understanding of the changes.

As part of the RMMP licence holders will need to develop their site specific environmental and risk control performance objectives. These objectives relate to the performance monitoring aspect of the condition which ensures that the licence holder measures the effectiveness of the controls they have employed, and the outcomes of their risk reduction measures.

Performance measurement will inform the reporting aspect of the monitoring program. This will facilitate a clear and transparent flow of information within the licence holder's organisation and can be used as the basis for future reporting requirements to EPA and potentially public reporting.

Where identified risks cannot be eliminated, the licence holder must describe how the risks identified are being minimised so far as reasonably practicable (SFARP). SFARP is a dynamic concept: it changes over time within the site-specific risk context. As such, the licence holder should assess and (where applicable) implement changes such as technological advances as new or alternative risk control measures become available.

In essence, the new condition provides a basis for a systematic and whole-of-activity approach to environmental and human health risk management within a continuous improvement framework to deliver long term risk and harm reduction. Licence holders that already have risk management systems for environment, health and safety, quality, process safety, etc, are likely to already have systems in place to enable compliance with the condition for their site. As such the new condition requires the licence holder to have a readily available, clear, comprehensive document showing how the licence conditions and GED will be complied with to support the delivery of its environmental objectives.

EPA may request that you supply a copy of your risk management and monitoring program at any time. EPA may use this information to inform its licence compliance program and any remedial and investigation activities.

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2.2. Reporting and record keeping conditions (former Annual Performance Statement)

Reporting requirement

The following standard condition will apply to all licensed sites:

You must provide to the Authority a Permission Information and Performance Statement (PIPS) in the form determined by the Authority within 2 months of receiving notification in writing from the Authority. The PIPS may be released to the public (in whole or in part).

This condition replaces condition G3.

This condition requires licence holders to provide information and report on performance. The accompanying guidance and individual notifications will prescribe the frequency and content for this statement.

For the first year of operation of the scheme, the current requirement of submitting the Annual Performance Statement (APS) by 30 September 2021 remains.

Following that, the Performance Statement process is not prescribed in the Act or Regulations anymore. All licence holders will therefore be required to submit a Permission Information and Performance Statement (PIPS) which must be signed by a duly authorised officer of the licensed entity and will be (whether wholly or in part) publicly available on EPA's website. EPA will clearly identify which sections of the annual statement will be made available to the public.

The frequency of reporting will vary from one licence holder to the next, based on individual performance and the level of risk of the scheduled activity. Initially, annual PIPS reporting will be expected for existing licence holders, with the need for a higher or lower frequency being determined during a site-specific review of the site (operating licence review).

The PIPS reporting framework will enable EPA to:

- specifically assess performance of licence holders against obligations set in their licence as well as associated duties and obligations to minimise risks SFARP
- help inform what SFARP should encompass for a whole sector through better understanding of the availability and efficiency of specific risk management measures
- review the licence as part of the operating licence review on average every five years and determine the need to amend conditions to reflect continual improvement in practice, allowing EPA to require additional risk controls measures or lower emissions for example.

Additional information:

- PIPS reporting dates will be staggered during the year, and the exact dates are to be confirmed after 1 July 2021.
- The most senior officer in the company, such as the CEO or managing director, will be required to sign your PIPS.
- Your PIPS is a public document and must be completed on the template that will be provided by EPA.
- You must seek approval from EPA if you require someone other than your CEO to sign your PIPS.
- Records supporting information in the PIPS need not be submitted to EPA. They must be kept by the licence holder for five years (see record keeping condition below).

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Record keeping condition

The following standard condition will apply to all licensed sites:

Information and monitoring records used for the preparation of, inclusion in, or support of, any reporting or notification that is required of you by the Authority (including data reporting, performance reporting, documents evidencing any risk and monitoring program) must be:

- a) *retained for five years; and*
- b) *must be made available to the Authority on request.*

This condition replaces condition G4.

Additional information:

- You must keep records relating to any reporting required of you by EPA for five years, in a form which is readily accessible and able to be produced to the Authority if requested.
- In some circumstances, for example, where there is no site office, and documents cannot physically be kept on site, access to electronic records prior to, and/or during an inspection (with notice given) is likely to be required.
- Records may include monitoring data, prescribed industrial waste transport certificates (interstate and Victorian), meeting minutes, observation logs, complaint records, incident registers and financial records.
- For the purpose of documenting movement of prescribed industrial waste, as required under the *Environment Protection (Industrial Waste Resource) Regulations 2009*, waste transport certificates are retained for a minimum of two years. These documents must be retained for a longer period under this licence condition, if they are relevant to any EPA reporting that you must undertake under your licence.

2.3. Notify conditions

The following standard condition will apply to all licensed sites:

You must immediately notify the Authority by calling 1300 EPA VIC (1300 372 842) in the event of:

- a) *A discharge, emission or deposit which gives rise to, or may give rise to, actual or potential harm to human health or the environment;*
- b) *A malfunction, breakdown or failure of risk control measures at the site which could reasonably be expected to give rise to actual or potential harm to human health or the environment; or*
- c) *Any breach of the licence.*

To notify EPA you must call the 24-hour Pollution Hotline, 1300 372 842. You will be asked to provide information such as:

- your licence number
- site details
- date and time of the breach
- description of the nature and location of the breach
- description of where any release to the environment took place
- circumstances and scale of the issue
- root cause of the issue (if known) and corrective measures taken or intended to be taken; and
- name and number of a contact person onsite.

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In addition, a second notification condition will be attached to licences to ensure that licence holders are updating EPA when certain aspects of their business have changed which will change details included on their permission.

The following standard condition will be applied to all licensed sites.

1. You must notify the Authority within 48 hours of the occurrence of any the following:

- a) Any change to your name or address (including your registered address and activity site as applicable);*
- b) You become, or are likely to become, an insolvent under administration;*
- c) You become, or are likely to become, an externally administered company under the Corporations Act; or*
- d) A change to an officer (as defined in the Act).*

2. You must update your information in the EPA Interaction Portal if any other relevant administrative details for your business change.

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2.4. Decommissioning condition

Existing permissions

For **operating licences** and **permits**, a standard condition will be included in the permission which requires the licence holder to:

- develop a decommissioning plan if one has not yet been provided to EPA as part of a development licence application; or
- develop and maintain an existing decommissioning plan during the time period that the scheduled activity is being undertaken.

Once the licence holder intends to begin decommissioning at their site, they will need to provide EPA with a more comprehensive decommissioning plan, including details of steps to be taken, service providers, specific timeframes, etc. prior to commencement of decommissioning.

The following condition will be included in transitioned operating licences (except those applying to landfills) and permissions for waste and resource recovery:

You must maintain a decommissioning plan that is in accordance with the current decommissioning guidelines published by the Authority. The decommissioning plan must be made available to the Authority upon request. If you propose to divest a section of the licensed site, cease part or all of the licensed activity or reduce the basis upon which the licence was granted to a point where licensing is no longer required you must supply to the Authority a detailed decommissioning plan [placeholder1 – number of business days (minimum 40 business days or by the Authority's discretion)] business days prior to commencement of decommissioning.

To show compliance with this condition, as a minimum:

You must have a current decommissioning plan that outlines how you intend to cease using the facility and reinstate the land to how it was prior to any scheduled activity being commenced. This plan will need to be prepared and implemented in accordance with the current EPA decommissioning guidelines.

New permissions

A condition requiring the development and provision of a decommissioning plan will be included in **development licences** as applicable. This will require licence holders to provide a plan to the EPA which outlines how they intend to cease using the facility and reinstate the land to how it was prior to any scheduled activity being commenced. This plan will need to be in accordance with the current EPA decommissioning guidelines.

2.5. Hard copy of the licence

The following standard condition will apply to all licence sites:

A hard copy of this licence must be kept at the site and be easily accessible to persons who are engaging in an activity conducted at the site. Information regarding the requirements of the licence and the Act duties must be included in site induction and training information.

We want to encourage you to spread the knowledge of your legal obligations to all your employees and other persons engaging in an activity conducted at the site. Therefore, we want you to have your licence visible and easily accessible to all persons involved in the activities conducted at your site, and to train all relevant persons regarding these requirements during site induction and training.

Part 2: Approach for sectorial and site-specific conditions

Sectorial conditions are currently split into three condition types:

- Amenity conditions addressing general risks of odour, dust, noise.
- Discharge conditions such as discharge limits for air emissions or water discharges.
- More specific sectorial conditions such as landfill conditions, or site-specific conditions.

1. Amenity conditions

Many aspects covered by amenity conditions as they are currently drafted are now covered under the GED and the obligation for anyone conducting an activity to minimise the risk of harm. Therefore, these conditions are likely to be removed during amendments of licences in the first 12 months of operation of the new scheme.

Some sectors and some sites may need more detailed amenity conditions, which can only be developed after a site-specific review has taken place using the operating licence review (OLR) mechanism. EPA will conduct reviews of sites and liaise with licence holders who will need to identify and implement risk monitoring programs to determine preventative controls. EPA may issue notices to require implementation of appropriate controls or address these issues as part of the OLR.

New sites with amenity issues are likely to have site-specific amenity conditions if relevant (with the condition adding value to the base requirement of the GED).

2. Discharge tables

Licences for activities which discharge waste to air or water may set maximum limits for specified pollutants. Exceedance of the limits in these discharge tables may trigger a requirement to notify EPA of the exceedance and may constitute a breach of a licence condition.

Notwithstanding the maximum levels in the discharge table, you as a licence holder continue to have obligations under the GED to minimise harm which may arise from all of your activities as far as reasonably practicable.

In addition, licences with discharge tables will have conditions which specify additional parameters which must be included in a monitoring and reporting plan (for example, causes of short-term variation in emission levels and opportunities to improve operational practices). The following standard condition will apply to all licensed sites with discharge tables:

Notwithstanding the discharge limits set out in this licence, the licence holder's risk management and monitoring program must address:

- a) Causes of short-term variation in emissions (which may include equipment or process failures and replacement of components);*
- b) Opportunities to reduce long term and event-driven emissions through practices or controls; and*
- c) Key indicators of emission variation including process and system indicators.*

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3. Other sectorial conditions

Other sectorial conditions will remain largely unchanged.

For conditions relating to the landfill sector, comprehensive work has been completed over the last 5-10 years to identify the key risks associated with landfill operations. Controls have been developed, as detailed in [Best practice environmental management – Siting, design, operation and rehabilitation of landfills](#) (Landfill BPEM) (EPA publication 788.3, published August 2015) and addressed in landfill licences. Over the last several years these conditions have been rigorously tested to specify objectives and controls which are recognised as meeting best practice controls for landfill operations in Victoria. These have been further reviewed and refined as part of the recent landfill sector periodic licence review.

Specific conditions have also been developed for the waste and resource recovery (WRR) sector. As a newly regulated sector, EPA has identified that these types of sites require additional sectorial conditions to facilitate compliance with minimum risk management measures. These conditions will be in addition to the general conditions which are already used in other EPA waste management licences. The new conditions will be consulted with you at a later stage.

Part 3: Financial assurance

The financial assurance (FA) suite of conditions has been reviewed. Seven conditions have been drafted to cover the following scenarios:

- A. General FA condition 1 - Brand new sites (A01, A05 or A13)

The following standard condition will apply:

"You must:

- a) prior to receiving waste at the activity site, provide the Authority with a financial assurance in a form and for an amount determined by the Authority; and*
- b) maintain such financial assurance (including any part of such assurance) so that it can be claimed on, utilised or realised by the Authority as and when required."*

- B. General FA condition 2 – Existing operating sites, except where General FA condition 3 is desirable (A01, A05 or A13). May also apply to L02 or G04.

The following standard condition will apply:

"You must:

- a) provide the Authority with a financial assurance in a form and for an amount determined by the Authority, by a date specified by the Authority; and*
- b) maintain such financial assurance (including any part of such assurance) so that it can be claimed on, utilised or realised by the Authority as and when required."*

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- C. General FA Condition 3 – Existing operating sites which have provided no or low FA where EPA has already determined the form and amount, or where there are compliance and enforcement concerns.

The following standard condition will apply:

"You must:

(a) by [placeholder-insert date], provide the Authority with a financial assurance in a form and for an amount determined by the Authority; and

(b) maintain such financial assurance (including any part of such assurance) so that it can be claimed on, utilised or realised by the Authority as and when required."

- D. Additional Landfill cell

The following standard condition will apply:

"Before depositing waste in [placeholder-cell name], you must provide further financial assurance in a form and for an amount determined by the Authority."

- E. Increased storage limit and FA (A01 or A13)

The following standard condition will apply:

"You must:

(a) prior to [placeholder – exceeding previous storage limit e.g. 'storing more than 100 tonnes of N119' OR e.g. 'accepting N119'] at the site, provide the Authority with further financial assurance in a form and for an amount determined by the Authority; and

(b) maintain such financial assurance (including any part of such assurance) so that it can be claimed on, utilised or realised by the Authority as and when required."

- F. FA by instalments

The following standard condition will apply:

"You must:

(a) provide the Authority with the financial assurance in a form and for the amounts determined by the Authority in instalments as follows: [placeholder - insert all instalment numbers and corresponding date that each instalment must be submitted by.]

(b) maintain such financial assurance (including any part of such assurance) so that it can be claimed on, utilised or realised by the Authority as and when required."

- G. Existing landfill FA calculation – Independent Assessment

The following standard condition will apply:

"You must:

a. by [placeholder-insert date], provide the Authority with an independent assessment of the nature, duration, extent and costs of remediation or clean up activities that may be required under the Act or regulations in connection with the scheduled activity, as required by the Authority."

Part 4: Consequential amendments to conditions

Because a number of the existing licence conditions refer to current legislation, consequential amendments will be made to conditions to update them to reflect the new legislative framework, for example amending a condition to update the reference to the type of audit prescribed in the Act.

Additionally, the deconstruction of the state environment protection policies (SEPPs) into the environment reference standards (ERS) and additional guidance is a more complicated change. While a number of requirements currently included in the SEPPs have not been carried over in the ERS under the new framework, it is generally intended that these obligations will continue to be included and enforced as part of licence conditions. Other requirements will be amended or removed as necessary.

Mixing zones

Mixing zones are a concept set up in SEPP (Waters), particularly relating to clauses 21 (applications for wastewater discharges to surface waters) and 23 (approval of mixing zones). They are broadly used in current licences for waste discharges.

Both of these clauses are generally covered by the GED in conjunction with permission conditions. For example, if the proponent can demonstrate that they are in compliance with the GED and are still not able to meet set individual discharge criteria, then EPA has the power to set requirements for the maintenance of a mixing zone. Current licences with mixing zones included as a condition will be reviewed individually through the operating licence review mechanism.

In the meantime, the conditions referring to mixing zones will be amended to be self-contained. One example is condition DW3:

Current text:

The mixing zone as shown in Schedule [placeholder1 – schedule number] extends [placeholder2 - '<X metres> downstream from discharge point <discharge point ID on licence> in <name of receiving waters>' OR describe an area defined relative to the licensed waste discharge points].

Future text:

You must ensure that the receiving environment at the following distance from the relevant discharge points achieves background levels in relation to the mixing zone for these indicators: [placeholder1 – list extent of mixing zone and the associated indicator].