

Environment Protection regulations and standards

Response to public comment report



Environment,
Land, Water
and Planning

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Acknowledgment

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.



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1. Minister's foreword

We are giving one of the world's oldest environmental protection agencies a life-changing makeover.

The new *Environment Protection Regulations* and *Environment Reference Standard (ERS)* are part of the most significant reforms to Victoria's environment protection framework in two generations.

The Victorian Government has invested more than \$180 million to transform the Environment Protection Authority (EPA) into a modern regulator, supported by a new preventative approach to managing waste and pollution that will better protect Victoria's environment now and into the future.

Victorian businesses, government agencies, local councils, environmental groups and the community have generously participated in the consultation process. Their valuable input has informed these comprehensive reforms made in response to the Ministerial Advisory Committee's 2015 EPA inquiry.

Together, the *Environment Protection Act 2017* and the *Environment Protection Amendment Act 2018* establish EPA as a world class regulator that uses the latest science to prevent harm to human health and the environment from pollution and waste.

The centrepiece of the new preventative approach is the general environmental duty which requires all Victorians, and all businesses in Victoria, to take reasonable and practical steps to reduce human and environmental health risks as part of any commercial, or private activity.

The reform program has strengthened penalties for corporate polluters and anyone committing offences against the environment. It offers a more flexible, proportionate and scientific, risk-based system to manage pollution and waste in Victoria.

The Government has also been responding to the impacts of coronavirus (COVID-19). The *COVID-19 Omnibus (Emergency Measures) Act 2020* was introduced to help Victorians manage during this socially and economically challenging time. This included postponing the new environment protection legislation to enable duty holders to focus on immediate challenges posed by the COVID-19 pandemic.

The Government has published proposed final versions of the regulations and the ERS. These publications have not yet been recommended to the Governor in Council for making, but they reflect changes made based on feedback received during the 2019 consultation. We are not seeking further feedback on the proposed final regulations as they represent the endorsed position of the Government. Publication of these proposed final regulations and ERS provide the detail Victorians need to adopt a new preventative approach to protecting their environment.

This report acknowledges the contributions Victorians made during the consultation. It details Government considerations made when deciding to adopt, not adopt, or look more closely at adopting suggestions in future.

Thank you to all those who participated in the consultation for the draft regulations and ERS. These historic reforms will help protect Victoria's environment for generations to come.



The Hon Lily D'Ambrosio MP

Minister for Energy, Environment and Climate Change

Minister for Solar Homes

2. Executive summary

This report presents the Victorian Government's response to public submissions on the draft regulations and draft Environment Reference Standard (ERS), subordinate legislation of the *Environment Protection Act 2017*.

In 2016 the Ministerial Advisory Committee Inquiry into the Environment Protection Authority (EPA) recommended a new approach to environment protection in Victoria, including a comprehensive overhaul of the *Environment Protection Act 1970*. In response, the Government committed to delivering a modernised, fit for purpose environment protection framework.

As part of these reforms the Victorian Parliament passed the *Environment Protection Act 2017* — which modernises EPA's corporate governance and strengthens its status as an independent science-based regulator — and the *Environment Protection Amendment Act 2018* — which amends the 2017 Act to introduce the new environment protection framework. The amended legislation (the new EP Act) is intended to commence on 1 July 2021.

Regulations are required to support and give effect to the new EP Act. The new EP Act also allows for the making of a new subordinate legislative instrument— the ERS — to assess and report on environmental conditions in the whole or any part of Victoria.

Following extensive consultation with industry, local government and community groups across 2018 and 2019, the Department of Environment, Land Water and Planning (DELWP) and EPA developed draft subordinate legislation and a range of supporting documents, the:

- *Environment Protection Regulations – Exposure Draft* (and its five incorporated documents), the Environment Protection Transitional Regulations – Exposure Draft, and a Regulatory Impact Statement (RIS) for the draft regulations
- *Environment Reference Standard – Exposure Draft* (draft ERS) and an Impact Assessment for the draft ERS.

The draft subordinate legislation and supporting documents were released for public consultation for 60 days, from 2 September to 31 October 2019, and prompted 317 submissions.¹

Of the 2,255 issues raised, 77 per cent related to the draft regulations, 9 per cent related to the draft ERS, while the remainder were about the new EP Act or other subjects.

The areas of the subordinate legislation most frequently addressed in submissions were the proposed regulations and standards on waste, contaminated land, noise and on-site wastewater management systems (OWMS). Many submissions queried how the draft ERS related to existing policy and legislation and what role the ERS would take under the new EP Act.

More than half of all issues raised related to EPA's implementation of the new environment protection framework, and provided comment on the regulator's future approach to engagement, guidance, education, permissions, compliance and enforcement. Many submissions expressed the importance of the partnership between EPA and local government as co-regulators of the new EP Act.

The Government analysed each issue and identified 510 issues that led to a change to the subordinate legislation. The key changes made in response public comments are to the waste, OWMS and noise regulations and to the ERS to better recognise Traditional Owners.

Issues raised in submissions that did not lead to changes will inform future reviews of the subordinate legislation, and are shaping EPA's approach to engagement, guidance, permissions and compliance.

On 23 April 2020 the Victorian Parliament passed the *COVID-19 Omnibus (Emergency Measures) Act 2020*, enacting measures to allow business, industry and local government to focus on the immediate impacts of coronavirus (COVID-19). One of these measures was to delay introducing the new environment protection legislation to enable duty holders to focus on immediate challenges posed by the COVID-19 pandemic.

The Government is releasing versions of the subordinate legislation that reflect changes made in advance of a decision to recommend their making by the Governor in Council. This will allow business, industry and local government more time to familiarise themselves with the detail of the new subordinate legislation while the processes to formalise the subordinate legislation progress. In this report, these versions will be referred to as '**proposed final**'. We are not seeking further feedback on the proposed final regulations or ERS as they represent the endorsed position of the Government.

The Government has welcomed the high level of public engagement and is grateful for contributions made by the community to the draft regulations and ERS. The changes made in response to issues raised

¹ Submissions are published at <https://engage.vic.gov.au/new-environmental-laws/subordinate-legislation>

have strengthened the legislative framework and supported EPA's transformation to a world class regulator that prevents harm to human health and the environment.

Together, the transformation of EPA and the new preventative approach to environment protection will help ensure that the health of Victorians, our environment and our world-recognised liveability continues to be protected as Victoria continues to grow.

3. Introduction

Victoria's new world-leading environment protection laws are intended to commence on 1 July 2021.

To support and give effect to these new laws, on 2 September 2019 the Minister for Energy, Environment and Climate Change, Minister for Solar Homes (the Minister) released the following draft subordinate legislation and supporting documents for public consultation:

- the *Environment Protection Regulations – Exposure Draft* along with their five incorporated documents and the *Environment Protection Transitional Regulations – Exposure Draft* (draft regulations)²
- the *Environment Reference Standard – Exposure Draft* (draft ERS)
- their supporting impact statements.³

During the public consultation period the Victorian Government received submissions from a wide range of community members and groups, businesses and industry associations, consultants, environmental law and advocacy groups. In accordance with the *Subordinate Legislation Act 1994*, the Government has considered all submissions.

The Government is now releasing **proposed final** versions of the subordinate legislation. These versions reflect the changes made to the subordinate legislation in advance of their final consideration and formal making by the Governor in Council. Once the process to finalise the subordinate legislation is complete, the Government will release the final subordinate legislation.

Since the public consultation period on the draft regulations and ERS took place, the Government has also introduced the *Environment Protection (Management of Tunnel Boring Machine Spoil) Regulations 2020*. The Government is considering how the requirements in these regulations, made under the existing *Environment Protection Act 1970*, should be carried over to the new environment protection framework. The results of this transition are not captured in this report.

3.1 Scope of this report

This report summarises the Government's response to the key issues raised in submissions on the draft regulations, their incorporated documents and the ERS. Where submissions called for changes to the draft regulations and ERS, this report summarises key changes made and explains why other changes have not been made at this time. As the report responds to the main issues, or rolls multiple issues into themes, you may not see all your individual issues addressed in this report.

More than half of all issues raised in submissions sought further information about how EPA would implement the final regulations and ERS. In response, this report also offers broad direction on how EPA will consider these matters, including developing guidance, support and education for stakeholders to understand and comply with new environment protection obligations.

This report is designed to offer readers a clear pathway to the issues that interest them without the need to read the full report. The report presents the key issues as follows:

- Chapter 3, Table 1 summarises key issues that resulted in a change.
- Chapter 4 Draft regulations – summarises the issues raised, presents the Government's response and any resulting changes.
- Chapter 5 ERS – summarises the issues raised, presents the Government's response and any resulting changes.
- Chapter 6 responds to issues raised in submissions concerning the implementation of the new environment protection framework.
- Appendix C summarises all key issues and responses.

² Drafts of five documents proposed to be incorporated in the Regulations were also published for comment: 1. *Waste Disposal Categories – Characteristics and Thresholds – Consultation Draft*; 2. *Waste Classification Assessment Protocol – Consultation Draft*; 3. *Calculating Monetary Benefits Protocol – Consultation Draft*; 4. *Noise Limit Assessment Protocol – Consultation Draft*; 5. *ESMP data manual 1992: Engine speed at maximum power and noise test engine speeds for vehicles 1970 to 2005 (pages 1-6) – Consultation Draft*.

³ Deloitte, 2019, *Regulatory Impact Statement: Proposed Environment Protection Regulations*, Environment Protection Authority and the *Impact Assessment: Proposed Environment Reference Standard*, Environment Protection Authority and Department of Land, Water and Planning. Both available at: <https://engage.vic.gov.au/new-environmental-laws/subordinate-legislation>

3.2 Overview of environment protection legislative reform

3.2.1 Ministerial Advisory Committee Inquiry and Government response

In 2016 the Ministerial Advisory Committee (MAC) Inquiry into the EPA (EPA Inquiry) — the first independent comprehensive review of EPA since it commenced operations in 1971 — provided its final report to Government.⁴ The MAC was asked to consider a set of issues including: the scope of EPA's role in public health, environment protection and environmental justice; the appropriateness of its governance; funding arrangements, and the scope and adequacy of its statutory powers.⁵

In its final report the MAC recommended a new approach to environment protection in Victoria, including a comprehensive overhaul of the *Environment Protection Act 1970* (EP Act 1970) and introduction of a general duty to minimise risks of harm to human health and the environment.

In January 2017 the Government released its response to the EPA Inquiry. The response commits to transform EPA to equip it for the future and to overhaul the EP Act 1970 to deliver a modernised, fit for purpose legislative framework for environment protection in Victoria.⁶

3.2.2 New Environment Protection Act

To deliver on the Government's commitments two environment protection acts were passed by Parliament:

- the *Environment Protection Act 2017* (EP Act 2017) modernises EPA's corporate governance and strengthens its status as an independent science-based regulator — the EP Act 2017 came into effect on 1 July 2018
- the *Environment Protection Amendment Act 2018* modernises and overhauls the EP Act 1970.

It is the Government's intention that on 1 July 2021 the EP Act 2017 will be amended by the *Environment Protection Amendment Act 2018* resulting in a single new environment protection Act (new EP Act).

The new EP Act provides a new approach to environment protection. It focuses on preventing

waste and pollution impacts, rather than managing those impacts after they have occurred. The new EP Act will strengthen and modernise the protection of Victoria's environment and human health through a more proportionate, risk-based environment protection framework.

The general environmental duty (GED) is central to the new EP legislation. It requires all Victorians to manage risks to human health and the environment that their activities create.⁷

The new EP Act also introduces:

- a strengthened framework of duties for the management of waste
- new duties for the management of contaminated land
- a tiered system of permissions to support risk-based and proportionate regulatory oversight
- strengthened regulatory powers, functions and sanctions to increase community confidence
- improved transparency through greater access to information and community participation.

More information on the new EP Act and GED is available on the EPA website.⁸

3.2.3 Environment Protection Regulations

The proposed final Regulations consolidate the six sets of regulations under the existing environment protection framework (existing regulations) into a single set of regulations. Proposed final transitional regulations were also created to support the smooth progression to the new framework. The proposed final Regulations comprise:

- aspects of the EP Act 1970 that, under the new EP Act, will instead be managed through regulations
- elements transferred from the existing regulations
- components of instruments under the EP Act 1970, such as State Environment Protection Policies (SEPPs) and Waste Management Policies (WMPs) that will be 'switched off' as subordinate instruments when the new framework takes effect, with some minor exceptions where clauses have been saved
- new elements required to give effect to aspects of the new EP Act.

⁴ The EPA Inquiry was conducted over 10 months by the MAC and their final report was publicly released on 16 May 2016. The final report can be viewed at <http://www.epa-inquiry.vic.gov.au/epa-inquiry-report>

⁵ The terms of reference for the EPA Inquiry can be viewed at <http://epa-inquiry.vic.gov.au/terms-of-reference>

⁶ *Andrews Labor Government Response to the Independent Inquiry into the Environment Protection Authority*, DELWP (2017)

⁷ More information on the GED is available at <https://www.epa.vic.gov.au/about-epa/laws/new-laws/general-environmental-duty>

⁸ More information is available at <https://www.epa.vic.gov.au/about-epa/laws/new-laws/a-better-environment>

The GED and other duties under the new EP Act cover a very wide variety of circumstances and risks. Regulations have been developed to provide additional prescription where:

- obligations under the new legislative framework cannot function, or would not be enforceable without prescription under regulation
- significant risks of harm to human health and the environment require further intervention to effectively regulate them
- greater certainty is required by duty holders to ensure consistent compliance with the duties and obligations under the new EP Act.

The proposed final Regulations incorporate five EPA documents that prescribe detailed technical matters, such as how to classify wastes, or measure noise under the regulations:

- *Waste Disposal Categories — Characteristics and Thresholds* (WDC document)
- *Waste Classification Assessment Protocol* (Waste classification protocol)
- *Calculating Monetary Benefits Protocol*
- *Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues* (Noise Protocol)
- *ESMP data manual 1992: Engine speed at maximum power and noise test engine speeds for vehicles 1970 to 2005* (ESMP data manual).

The MAC recommended deconstructing SEPPs and WMPs — splitting their component parts into separate fit-for-purpose instruments. As such, a key reform introduced in response to the EPA Inquiry was the retirement of the SEPPs and WMPs which were key subordinate instruments under the EP Act 1970. Some content from the SEPPs and WMPs has been 'rehoused' into the proposed final Regulations and ERS.

However, some SEPP provisions were not rehoused in subordinate instruments as the risks they address are already well covered through the new EP Act, or because they are better framed as guidance.

Importantly, even once a SEPP has been retired, its content will still inform the 'standard of care' expected for a person conducting an activity to comply with the GED.

3.2.4 Other legal instruments

Under the new EP Act and subordinate legislation, a range of other legal instruments can be used to address risks of harm to human health and the environment or provide greater certainty and consistency. These include determinations, designations and compliance codes.⁹

Some risks are better managed through these instruments, rather than through the regulations or the ERS. This report sets out which issues raised in submissions will be addressed through the instruments outlined above.

3.2.5 Environment Reference Standard

The MAC proposed creating a new standalone instrument for environmental standards housed in SEPPs. The Government supported the recommendation and the ERS delivers on this commitment.

The ERS presents a set of environmental outcomes that the Victorian community seeks to achieve or maintain. It describes environmental values and applies them to the whole or parts of the state. It also sets out indicators and objectives by which environmental values may be assessed. Unlike the SEPPs and WMPs, the ERS does not include attainment programs, rules or obligations, or other requirements.

The new EP Act requires that an ERS must be considered in a range of circumstances, such as by EPA when assessing development, operating and pilot project licences. EPA may also use the ERS to:

- inform other decisions under the new EP Act that may have an impact on the environmental values of a location
- monitor changes in the environment over time.

The ERS will also be considered by:

- the Minister when making regulations, developing compliance codes or declaring issues of environmental concern
- environmental auditors when conducting audits
- responsible authorities when making planning permit decisions (where they are relevant)
- the Victorian Civil and Administrative Tribunal (VCAT) when reviewing relevant decisions.

⁹ See Appendix E: Glossary of terms.

3.3 Draft regulations and Environment Reference Standard (ERS)

3.3.1 Principles

The following principles were used to guide the approach to developing the draft regulations and ERS:

- The GED and other duties in the new EP Act are the primary way to manage risks of harm to human health and the environment. Regulations should be developed only where the new EP Act requires them to function.
- Any regulations that sit beneath the new EP Act should:
 - be proportionate to the risk of harm
 - maintain or reduce regulatory burden in Victoria, where possible
 - offer flexibility to duty holders in how they comply with their obligations
 - be consistent and predictable to provide confidence in the system
 - be enforceable.

3.3.2 Consultation

The Government acknowledges and appreciates those who gave considerable time, thought and feedback that influenced the direction and development of the proposed final Regulations and ERS.

The draft regulations and ERS were developed with the support of more than 150 hours of consultation with industry, local government and community groups. This built on stakeholder input from recent reviews of Victorian environment protection policies and regulations.

The consultation took place through a series of discussions, workshops, surveys, focus groups and one-on-one interviews with key stakeholders, permission holders, industry representatives, community representatives and local government. This included more than 100 meetings, 150 responses to a survey and detailed responses to more than 200 written requests for information.

In addition to EPA's Community Reference Group (CRG) and six Industry Reference Groups (IRG), five specific stakeholder working groups were formed to inform regulatory development across six segments — waste, noise, water and air, permissions and contaminated land. Appendix B lists these groups and the organisations represented.

3.3.3 Public comment period

The draft regulations, incorporated documents, ERS and their impact statements were made available for public comment on the Engage Victoria website for 60 days, from 2 September to 31 October 2019. During this period:

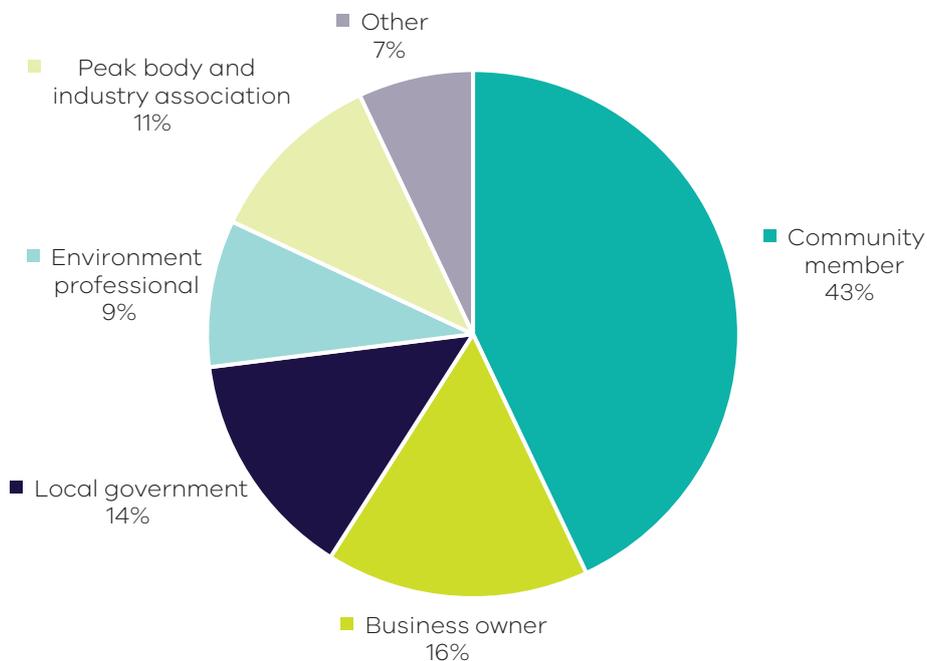
- the website recorded more than 8,500 visits
- DELWP and EPA:
 - attended approximately 60 events including regional open house forums, IRG and CRG meetings, community group meetings, conferences, legal seminars and industry association events
 - responded to over 220 individual questions submitted by email, or through events
 - promoted the consultation through print media, social media, newsletters and EPA websites, resulting in more than 30,000 views of EPA's social media posts.
 - received 317 submissions.

Most submitters (64 per cent) were located in metropolitan Victoria, 24 per cent were located in rural/regional Victoria, 7 per cent were located in other parts of Australia and the locations of 5 per cent of submitters were unknown.

Individual community members (43 per cent) made the most submissions, with business owners (16 per cent), industry associations (11 per cent) and local government (14 per cent) also well represented (see Figure 1). A full list of submitters (where not marked confidential) is provided in Appendix A.

A detailed analysis of all formal submissions identified 2,255 individual issues. Although community members and organisations represented a large proportion of submitters, their focus was on a small set of key issues. For example, more than 100

Figure 1: Percentage of submissions by stakeholder type



submissions from community members focused on a single issue. In contrast, submissions from industry and local government often raised multiple issues. Community members raised almost 400 individual issues (nearly 20 per cent) while organisations, mostly industry and local government, raised over 1,800 issues (around 80 per cent).

3.3.4 Summary of issues raised in submissions

Of the 2,255 individual issues identified, 77 per cent related to the draft regulations, 9 per cent related to the draft ERS and the remaining 14 per cent related to other subjects including the RIS, the new EP Act and the GED.

Most issues (57 per cent) were concerned with the implementation of the regulations or were requests for guidance, in particular on contaminated environments, waste and noise.

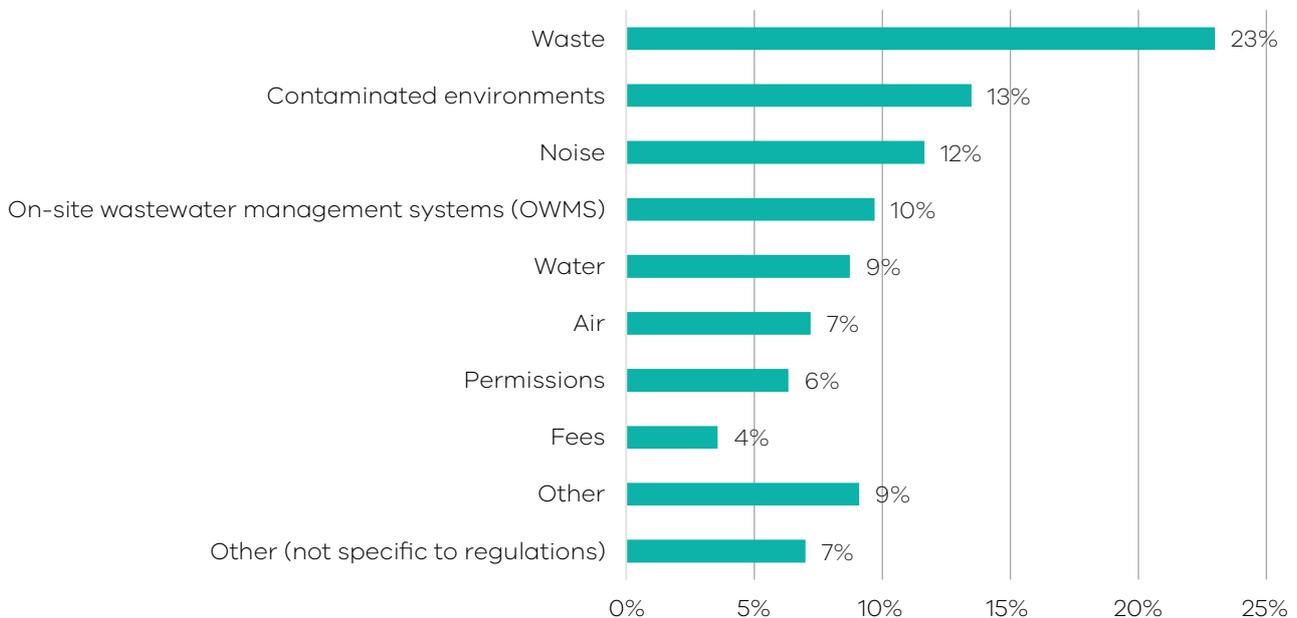
Other areas of concern included cost and operational viability of the proposed subordinate legislation, and protection of human health and the environment.

Figure 2 summarises the frequency of all issues raised across the different parts of the regulations. Waste regulations received the most comments, followed by contaminated environments. The strong focus on waste was expected, as waste regulations offer the largest area of change compared with the existing legislation and address an area of significant priority to the community. Similarly, regulations relating to contaminated environments were expected to generate strong interest, as they relate to new duties introduced in the new EP Act.

3.3.5 Summary of the Government’s response to issues raised

The Government analysed each of the 2,255 issues

Figure 2: Frequency of issues raised on the draft regulations



against clear criteria to determine whether changes should be made to the subordinate legislation. The criteria enabled an assessment of whether the issue:

- raised significant new information that prompted reviewing the proposed approach
- identified significant unintended consequences, such as operational, legal or economic barriers to implementation
- proposed an alternative approach that offered a better opportunity to achieve policy objectives.

This assessment identified 510 issues that led to a change to the draft regulations, incorporated documents or the draft ERS. The most significant areas of change to the draft regulations and ERS arising from issues in submissions related to waste, OWMS and noise:

- Changes made to the waste regulations include:
 - enabling alternatives to the DoU process to remove unnecessary burden for industries with high transaction volumes
 - clarifying contaminated soil definitions and thresholds
 - harmonising dangerous goods transport requirements with existing legislation.
- Changes were made to the OWMS regulations to

reduce reliance on the GED and provide a strengthened and more prescriptive framework for the operation and maintenance of these systems.

- Changes were made to the noise regulations to offer a more proportionate approach to risks to human health posed by entertainment venues and events, better support compliance for industry and other duty holders in emergency situations and clarify obligations across the framework.
- Changes were made to the ERS to better recognise Traditional Owners, continue recognition of the value of musical entertainment and address duplication and technical issues.

The remaining issues did not prompt any changes as they either did not relate to the subordinate legislation, or raised matters that could be more effectively addressed through other means — such as guidance, education, policy, position statements, memoranda of understanding, or other legislative instruments (see Section 3.2.4).

Table 1 summarises these and other key changes to the draft regulations, incorporated documents and ERS in response to public comments and further consultation. Appendix C Table 5 contains a full summary of all key issues raised in this report and the Government’s response.

Table 1: Summary of key issues that led to changes to the draft regulations and ERS

Key issue	Change made
Contaminated land	
<p>Concern that the thresholds for notifying ground and surface water contamination were very low and disproportionate to risks posed to human health.</p>	<p>The proposed final Regulations limit notifiable circumstances for the duty to notify for groundwater contamination to those where the impacted groundwater is used, or may be used (such as for drinking, stock watering or irrigation), or discharges or is likely to discharge into surface water. The adjustment focuses notifiable circumstances on human health exposure risk.</p>
Permissions	
<p>Concern that the draft definition for a 'project site' would not allow the safe reuse and containment of lower-level contaminated soils (Category D waste soils) within a major project on multiple sites.</p>	<p>The proposed final Regulations include a broader definition of 'project site'. This will enable EPA, where appropriate, to issue a permit to allow lower-level contaminated soils to be contained or reused and appropriately managed across large scale public infrastructure projects.</p>
<p>Concern that existing general exemptions for certain discharges to the atmosphere were not translated to the draft regulations, requiring many existing exempted sites to be licensed.</p>	<p>The proposed final Regulations include minor changes to align with the policy intent to generally retain existing exemptions. This includes a new regulation to exempt discharges or emissions to the atmosphere from specified modification activities from a development licence requirement. In addition, EPA will create a determination under Section 48 of the new EP Act to exempt activities with discharges or emissions that are in accordance with certain requirements from permissions.</p>
<p>Concern that there was no clear exemption from the requirement for persons to have a permit to receive or use biosolids or wastewater.</p>	<p>The activity descriptions for A14 and A15 permits have been updated to clarify coverage of the permit requirement.</p>
<p>Request to define the term 'large containers' for those with hazardous residues banned from landfill.</p>	<p>The proposed final Regulations set out the type and size of containers contaminated with reportable priority waste that are banned from landfill to reflect the intending meaning, as set out in waste code N100 and N105.</p>
<p>Clarity was sought about the term 'Tunnel ventilation systems' compared with the description 'road tunnel ventilation systems'.</p>	<p>To avoid doubt, the activity type has been updated in the proposed final Regulations to 'road tunnel ventilation systems'.</p>
<p>Concern that the fee levels for some permissions and associated activities appeared high.</p>	<p>Several fees have been refined to support cost recovery and minor adjustments have been made to correct errors and retain arrangements in the EP Act 1970 enabling the recovery of differences in annual licence fees following licence amendment.</p>

Key issue	Change made
On-site wastewater management systems (OWMS)	
<p>Concern that the draft regulations would not allow local government to adequately regulate and manage OWMS and recover appropriate costs.</p>	<p>The proposed final Regulations set out new duties for persons in management or control of an OWMS, the definition of 'alteration of OWMS' has been changed, the requirement for local government to provide annual returns has been removed, the fees charged by local government have been changed, and requirements for applications to transfer, amend and renew permits, and greater fee flexibility have been introduced. The minimum duration of an OWMS permit under the EP Act has been updated to better align with other local government issued permits.</p>
Waste	
<p>Several technical issues were identified with the Waste classification assessment protocol and the WDC document which would limit operational viability.¹⁰</p>	<p>Corrections have been made to the draft regulations, Waste classification protocol and the WDC document, including cross-referencing, adding lower bound thresholds, clarifying the definition of tyres, increasing the range for pH, and increasing the volume threshold for manures and animal bedding. PFAS contamination will be assessed on a case by case basis in line with the best available science.</p>
<p>Concern that the prohibition on mixing, blending or diluting priority waste had potential to limit the ability to use waste in waste-to-energy projects or for beneficial reuse options.</p>	<p>While the prohibition has been retained, the proposed final Regulations enable waste to be mixed, blended or diluted to a lower-risk category if a designation has been issued by EPA.</p>
<p>Concern that the transitional regulation to 'save' a waste classification made under the Environment Protection (Industrial Waste Resource) Regulations 2009 for one year from EP Act commencement was too short and would impact existing commercial arrangements.</p>	<p>The proposed final transitional regulations continue existing specific classifications made under the <i>Environment Protection (Industrial Waste Resource) Regulations 2009</i> that are in place at EP Act commencement for two years from commencement. Under the proposed final Regulations the term 'designation' equates to a 'classification' under the existing regulations.</p>
<p>There was broad concern expressed on the potential for the new DoU instruments designed to enable reuse of waste material to be overly burdensome compared to the risks posed by that waste. In particular, concerns about the use of DoUs for fill material, organic waste, other farm wastes and aggregates.</p>	<p>The proposed final Regulations have reduced the information required of waste producers and providers in a DoU, requiring only enough information to enable consent from receivers. They better balance the impact on duty holders with risk to the environment, making clear that a DoU will not be required when the deposit or reuse of a waste is subject to a determination made by EPA, or where EPA authorises an alternative scheme to manage risk. The proposed final Regulations also remove the 60-day limit for temporary storage of fill material.</p>

¹⁰ <https://www.epa.vic.gov.au/about-epa/publications/1827-1>

Key issue	Change made
<p>Concern expressed about a disproportionate burden for 'drop-off points' receiving and storing small amounts of reportable priority waste and priority waste from domestic and some trade sources, such as product stewardship schemes and government collection schemes and projects.</p>	<p>The proposed final Regulations enables EPA to issue a designation or s48 determination to allow for product stewardship schemes or government collection schemes or programs to transport or collect small amounts of hazardous wastes, consistent with existing practice.</p>
<p>Concerns that waste acid sulfate soils (WASS) and end-of-life vehicles were not visible in the pre-classified industrial waste list.</p>	<p>New waste codes clarify that WASS and end-of-life vehicles are in the waste management framework. Receipt of actual or potential WASS has been added as an activity requiring a registration to clarify lawful place.</p>
<p>Requests for the classification of contaminated soil to consider existing background levels of contaminants and to allow for reuse of soils at sites with the same elevated background levels as the waste soil.</p>	<p>The proposed final Regulations enable EPA to issue designations to change the classification of the soils to 'fill material' where the soil is sourced from areas that are naturally elevated or elevated due to historical land use. EPA can issue a designation to reclassify the soil where the use would not contribute to raising background contamination.</p>
<p>Transport requirements for wastes that are dangerous goods were not consistent with the requirements of the Dangerous Goods Act 1985 (DG Act) and other jurisdictions.</p>	<p>The proposed final Regulations align with the DG Act by requiring a driver to:</p> <ul style="list-style-type: none"> • undertake dangerous goods training • adhere to load restraint requirements • keep records onboard to inform emergency services in the event of an accident.
<p>Concern that the requirement for landfill flares to achieve 'complete combustion' of landfill gas was not practical or achievable.</p>	<p>The proposed final Regulations require 98 per cent destruction efficiency instead of 100 per cent, or the minimum recommended residence time of 0.3 seconds at a minimum temperature of 1000 C.</p>
<p>Concern that the requirement for payment of the waste levy to EPA within 21 days was not practicable given current commercial arrangements.</p>	<p>The payment terms have been changed to 64 business days (usually 90 days), in line with the existing environment protection framework.</p>
<p>Permissions</p>	
<p>Clarification sought on whether vapour pressure standards that apply to petrol produced in Victoria should also be limited to petrol supplied in Victoria.</p>	<p>The proposed final Regulations clarify that vapour pressure standards apply to petrol supplied in Victoria, not to petrol refined in Victoria for supply to other states.</p>

Key issue	Change made
Noise	
<p>There was concern about inadvertent noncompliance with noise limits due to safety and emergency related noise.</p>	<p>The proposed final Regulations exempt 'equipment used in relation to an emergency' from assessment against the noise limits in the regulations and include a definition of emergency that reflects the definition in the <i>Emergency Management Act 2013</i>.</p>
<p>Concern that new noise sensitive areas in rural areas would create compliance problems for music festivals due to the co-location of accommodation facilities nearby.</p>	<p>The proposed final Regulations exempt music festival operators from the noise limits in the regulations at new noise sensitive areas in rural areas during festivals.</p>
<p>Concern that noise sensitive areas for childcare centres, kindergartens, primary and secondary schools outside of their operational hours was not proportionate to the risk of harm to human health posed by noise.</p>	<p>The proposed final Regulations apply the noise limits in the regulations for the new noise sensitive areas of childcare centres, kindergartens, primary and secondary schools only during normal operating hours.</p>
<p>The permission requirements for outdoor entertainment venues or events were challenged, with supporting evidence provided. Comments made that the number of complaints received is not an appropriate metric as many complaints are found not to be substantiated.</p>	<p>The proposed final Regulations better accommodate a range of cultural events and clarify and broaden circumstances when a permission is not needed for an outdoor event. They also specify that it is the 'history of complaints' rather than simply the number of complaints that is to be considered when assessing applications.</p>
<p>A number of technical issues were identified concerning noise measurement.</p>	<p>The draft Noise Protocol has been changed where necessary.</p>
Water	
<p>Concern that definitions of 'cooling waters', 'wash down' water and 'aquatic pest', would restrict normal boating activities and have unintended consequences not proportionate to risk of harm.</p>	<p>The proposed final Regulations:</p> <ul style="list-style-type: none"> • allow the discharge of wash down and cooling waters from normal boating activities, providing the related risks are managed as far as reasonably practicable • exempt discharges from industrial processes if they are approved under the permissions framework • clarify that native and local species are not considered aquatic pests and are not required to be captured.

Key issue	Change made
Environment reference standard	
<p>Concerns about the draft ERS standards and their interpretation.</p>	<p>The proposed final ERS:</p> <ul style="list-style-type: none"> • adds recognition of Traditional Owners to the ERS preamble • adds an environmental value for ‘musical entertainment’ to match an equivalent provision in SEPP N-2 • clarifies that environmental values do not apply to constructed landfill cells • clarifies one surface water segment boundary and produces an open data digital spatial layer for segment boundaries • removes inconsistency. <p>Other minor revisions were made for clarity and to improve readability.</p>

3.3.6 EPA transformation

Significant work continues to ensure EPA is equipped to support industry, business, government, councils, communities and Victorians so they can understand their role in shaping a healthy, liveable and prosperous Victoria. The Government is supporting EPA to undertake this significant transformation by:

- overhauling systems and processes to support implementation and compliance and enforcement activities under the new prevention-based framework
- training staff to have the capability and expertise to give risk-based advice and fulfil their compliance and enforcement functions
- reviewing regulatory, compliance and enforcement strategies to align with the new approach to environment protection and strengthened powers
- developing an education program to support industry, small business, local government and community to be aware of, and understand how to comply with the new framework — this includes establishing a new Industry Guidance Group within EPA to develop guidance to support compliance.



4. Draft regulations – key issues and responses

This chapter summarises the Government’s response to concerns raised about the draft regulations in submissions, including general comments on the regulatory framework.

Issues have been categorised in the following themes:

- level of detail in the draft regulations and ERS
- contaminated land
- permissions
- on-site wastewater management systems
- waste
- air
- noise
- water.

4.1 Level of detail in the draft regulations and ERS

Issue

Many submissions expressed concern that the draft regulations and ERS did not reflect the detail in related clauses in the existing regulations, SEPPs and WMPs. There was a perception that the absence of this detail would lessen protection for human health and the environment — in particular for air, noise and water environments.

Some community submissions argued that explicit regulatory prohibition of certain activities was necessary to protect human health and the environment. Industry and local government submissions often sought more detailed prescription of their environmental management requirements, or permission application and assessment requirements to provide greater certainty for compliance.

Response

This widespread call to retain greater detail or familiar wording is common in regulatory reforms that shift to preventative, risk-based and flexible models. In response to these concerns, each issue was assessed to ensure that any removal of prescriptive detail or changes to wording in subordinate legislation was matched by suitable controls elsewhere in the new environment protection framework.

While the new environment protection framework may not specify all risks of harm to human health and the environment that may arise, it maintains or

strengthens the equivalent protections set out in the existing subordinate instruments. The risks remain regulated through the new tools available under the new EP Act that create powerful obligations on duty holders — the GED, other new EP Act duties and EPA permissions. Therefore, where the new EP Act provides equivalent or stronger protections to the existing subordinate instruments, these requirements have not been reproduced in the proposed final Regulations.

In addition, providing the level of prescriptive detail sought in submissions may sometimes narrow the powers under the new EP Act and limit protections for human health and the environment. For example, the new EP Act gives EPA strong discretionary power to consider a range of matters when assessing permission applications and making permission conditions. Codifying those powers may narrow the scope of the regulator to consider emerging risks and set conditions that reflect changing community expectations.

The Government acknowledges that this risk-based and more flexible approach is less prescriptive about compliance obligations. Any relevant and current information from the existing tools will continue to form part of Victoria’s state of knowledge that informs compliance expectations. EPA also has a substantial ongoing work program to develop guidance and other materials to support compliance with the new framework (see Chapter 6).

4.2 Contaminated land

Part 2.1 (Contaminated Land) of the proposed final Regulations sets out how the contaminated land duties are to be met by duty holders where land is contaminated.

The new EP Act sets out two new duties specific to contaminated land:

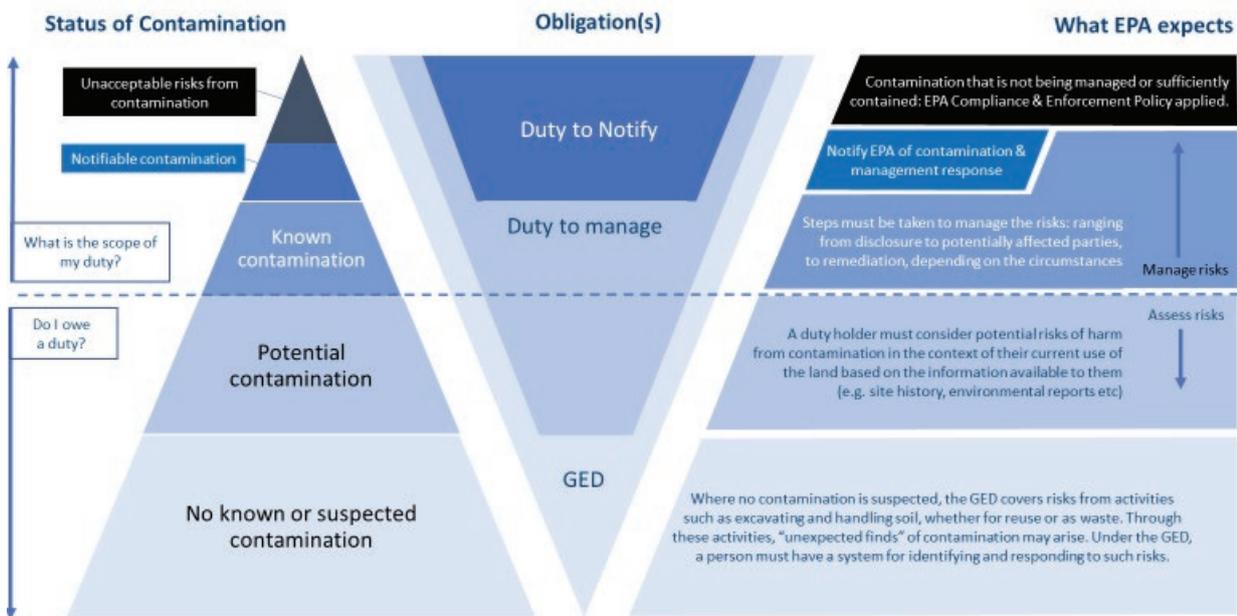
- duty to manage contaminated land (Section 39)
- duty to notify of contaminated land. (Section 40)

Figure 3 represents the relationship between knowledge of different states of contamination and the corresponding compliance response that is expected under the key duties.

The proposed final Regulations set out:

- that EPA can make a determination to set the background level of waste or a chemical substance (a contaminant) to determine what is contaminated land under the new EP Act
- the circumstances when EPA must be notified of contaminated land under the duty to notify of contaminated land and exemptions from this duty

Figure 3: Contaminated land framework



- information required to be provided as part of the notification
- clean-up of non-aqueous phase liquids (NAPLs).

The duty to notify requires a person in management or control of contaminated land to notify EPA when contaminants in soil, groundwater or surface water are above certain concentrations and other circumstances set out in the regulations apply, such as whether a person is likely to be exposed to the contaminant.

The proposed final Regulations limit the duty to notify to contaminants specified in the regulations (asbestos and NAPLs) and those listed in Section 6 of Schedule B1 of the *National Environment Protection (Assessment of Site Contamination) Measure 1999* (NEPM ASC). The concentration above which notification is required is informed by the regulations themselves (for example for asbestos or NAPLs), the NEPM or *Australian and New Zealand Guidelines for Fresh and Marine Water Quality* (ANZG) and the *Australian Drinking Water Guidelines* (ADWG). Which concentration applies in which circumstance is set out in the proposed final Regulations.

This duty provides EPA with information on levels of contamination across Victoria, and on the actions proposed by duty holders to manage risks arising.

The new EP Act also introduces a duty to manage contaminated land, which applies to all contaminants. It is not restricted to certain contaminants unlike the duty to notify.

Many submissions on the draft contaminated land regulations were received from local councils, industry (including energy, development, mining and construction sectors), engineering and environmental consultants, contaminated land and asbestos industry associations and legal peak bodies.

Overall, submitters found the draft contaminated land regulations complex and sought clarity or guidance on how to comply with the new contaminated land duties under the new EP Act.

This section responds to the following key concerns:

- general complexity of the regulation drafting and limitations of sampling methods
- determining contamination in areas of naturally elevated contaminants or elevated due to historical land use
- duty to notify of contaminated land:
 - thresholds for notifiable asbestos contamination
 - emerging contaminants
 - duty to manage contaminated land: regulation to clean up NAPLs
 - interaction between the contaminated land regulations and the Victoria Planning Provisions (VPPs).

4.2.1 General complexity of the regulation drafting and limitations of sampling methodology

Issue

Many submissions from industry, consultants and environmental auditors remarked that the draft contaminated land regulations are complex.

In particular, submissions expressed concern that the statistical analysis required to decide if a person must notify EPA about contaminated land, ground or surface water led to uncertainty on how to comply. This is particularly relevant for unique sites where standard sampling approaches may be inadequate to accurately determine contamination levels.

Submissions requested either redrafting the draft regulations more clearly or guidance to support compliance. A couple of submissions also requested a time extension or delay to commencement of the duty to notify to ensure they understand how to comply.

Response

The technical detail remains in the proposed final Regulations. The detail is required to reflect national and international standards and provide certainty and clarity on this new duty across a broad range of contaminants. However, EPA will provide greater clarity through guidance. This will include guidance on sampling at sites with special characteristics where standard methods may not be appropriate.

Chapter 6 outlines EPA's implementation approach for the new environment protection framework, including compliance and enforcement, and developing guidance.

4.2.2 Determining contamination in areas of elevated concentrations due to natural concentrations or historical land use

Issue

Many submissions across industry, environmental auditors and local government sought clarity about whether — when determining if land is contaminated — the new environment protection framework took into account areas of naturally elevated contaminants, or regions with elevated contaminants due to historical land use. Their primary concern was the potential unnecessary burden on many landowners (or those in management and control of land) required by the duty to notify and/or manage contaminated land.

Examples of these areas include parts of Melbourne that have naturally higher levels of nickel due to geology, or the north-west region of Victoria that has higher background levels of arsenic due to historic gold mining.

Response

No changes were made to the proposed final Regulations to address this issue. The new EP Act already enables EPA to consider and account for naturally elevated contaminants or elevated due to historical land use.

Under the new EP Act land is contaminated when waste or a chemical substance is present above background levels and creates a risk of harm to human health or the environment. EPA can make determinations to set the background level for substances that take into account historic or natural factors. Such determinations can be general or specific and may apply to a single location or several locations.¹¹ Under the new EP Act, where the regulations, ERS or a determination do not set a background level, the naturally occurring concentration will apply.

4.2.3 Duty to notify of contaminated land – thresholds for notifiable contamination

Issue

Many submissions from industry, consultants, local and state government raised concerns that the approach for the duty to notify of contamination was not risk-based in all circumstances and some thresholds were conservative.

Several proposed that the threshold to notify of ground or surface water contamination was not proportionate to risks posed to human health for uses other than drinking water. The draft regulations set thresholds using ANZG and ADWG.

Some submissions suggested exemptions to the duty to notify should be broadened to include where an audit has commenced but is not yet complete or where EPA may have become aware of the contamination through other means.

Some submissions also expressed concern that the contaminated land duties (and related clean-up costs) applied even if the person currently in control or management did not cause the contamination.

¹¹ A background level can be a set number or methodology to determine contamination.

Response

In response to these issues, the proposed final Regulations align the duty to notify of groundwater contamination to the risk of harm to human health, limiting requirements to when the groundwater may be used for specific activities or discharges into surface water.

Other thresholds and exemptions have not been adjusted, as it would hamper EPA's ability to gather information to:

- address information gaps on contamination in Victoria (including legacy contamination)
- support duty holders to address contamination risks.

In addition, the proposed final Regulations provide for flexibility in some cases by applying factors set out under the relevant thresholds tables. For example, for arsenic, bioavailability can be taken into account to adjust the threshold.

The duty to notify remains on any person in management or control of contaminated land irrespective of the source of that contamination or if it was due to a previous person in management or control. However, the new EP Act provides for recovery in court of reasonable compliance costs from any person responsible for causing or contributing to contamination of the land. If a person has a duty to notify but the contamination risk is at an acceptable level for the use, then this could be reflected in their management response.

4.2.4 Duty to notify of contaminated land — asbestos contamination**Issue**

Several submissions from contaminated land specialists and water corporations were concerned that it was unclear when notification was required for asbestos contamination. They suggested this may lead to inconsistent application of the regulations by auditors or those in management and control of land.

To address this, they suggested the regulations include:

- threshold levels that reflect values in the NEPM ASC instead of assessing risk of likely exposure
- definition for the term 'asbestos'
- clarity on how to determine whether a person has been, or is likely to be, exposed to airborne asbestos fibre levels
- sampling requirements when there is uncertainty about whether a material contains asbestos.

Response

No changes were made to the draft regulations in response to these issues:

- The proposed final Regulations have not incorporated the NEPM ASC criteria for asbestos as this would create inconsistencies with the Occupational Health and Safety Regulations 2017 (OHS Regulations).
- The proposed final Regulations do not include a definition of asbestos as the framework relies on the definition of asbestos in other Victorian legislation.
- Detailed information to address other issues relating to assessment and sampling methodology will be provided in EPA guidance.

4.2.5 Duty to notify of contaminated land — emerging contaminants**Issue**

Some submissions from industry, contaminated land industry associations and consultants queried whether the duty to notify extends to contaminants not specifically provided for in the draft regulations.

Response

The duty to notify continues to apply to all contaminants listed in Section 6 of Schedule B1 of the NEPM ASC. Notification is also prescribed to cover friable asbestos under certain circumstances and all circumstances of NAPL. Therefore, emerging contaminants would be included if and when they are listed in the NEPM ASC.

EPA will also gain information on emerging contaminants through ambient monitoring and working with other Australian jurisdictions under the National Chemicals Working Group.

4.2.6 Duty to manage — requirement to clean up non-aqueous phase liquids**Issue**

While local government supported the regulation to clean up NAPLs some across industry suggested this was too burdensome compared to the risk they posed. The submissions suggested EPA review the draft regulations to avoid undue compliance burden compared to the risks posed by contaminants. This request included a more targeted definition of NAPLs.

Response

The draft regulation to clean up NAPLs replicated the requirements under the SEPP (Waters). This includes clean-up as far as reasonably practicable, which considers cost, available technology and risk of harm posed by the NAPL. Given the potential risks posed, the requirements of the SEPP (Waters) have been retained in the proposed final Regulations.

4.2.7 Interaction with the Victoria Planning Scheme

Issue

Several submissions from local government and an environmental consultant sought clarity on the relationship between the VPPs and the new environment protection framework for the management and development of contaminated land. For example, how the approach to audits and the 'Site Management Order' tool available under the new EP Act are applicable to planning permits or other work permits issued by local government.

Response

The Government acknowledges the significance of these issues, particularly for local government and organisations subject to regulation under the VPPs and will ensure consistency between the environment protection framework and the Victorian planning system. DELWP and EPA are working to integrate the contaminated land framework and the land use planning system. This includes revising the relevant planning system instruments, including the VPPs, to update references to the existing framework with the new EP Act.

4.3 Permissions

Chapter 3 (Permissions) of the proposed final Regulations set out activities that require permissions, matters to be included in an application for a permission, certain prescribed conditions, exemptions from permission requirements and other general matters related to permissions.

Submissions on the draft permission regulations were received from industry, local government, water corporations and waste managers. Many of these submissions sought clarity on the new permissions and transition of existing approvals into the new scheme. Section 6.4 discusses EPA's approach to implementing the permissions framework.

This section responds to the following key concerns:

- extending maximum permission duration
- changing thresholds for waste and resources recovery (A13) permission activity
- relationship between contaminated soil (Category D) permit and project site
- exemption from requiring a permission
- temporary storage of asbestos
- clarifying when a financial assurance is required
- clarifying scope of definitions or activities
- level of fees and fee design for permissions.

4.3.1 Request to extend maximum permission duration

Issue

Several submissions from industry, water corporations and local government requested extensions to maximum permission duration (for registration, permit and licences). They asserted that the prescribed periods for permissions were too short and would introduce financial burden to reapply and impact commercial contracts.

Response

The new EP Act sets the maximum duration for permissions — the regulations cannot increase this maximum time frame. However, permissions that expire may be re-applied for in the case of licences and simply renewed in the case of permits and registrations.

The Government supported the MAC's recommendation to strengthen prevention of harm by introducing, among other tools, fixed terms for licences. This is integral to ongoing improvement and re-setting what is reasonably practicable under the permission.

While the new licence renewal process may introduce some additional cost, it has been simplified compared to the process under the existing framework, and renewal and re-application fees remain lower than initial application fees in most instances. The risk of delays will also be reduced due to the requirement under the new EP Act for regular formal reviews of licences — these will provide early warning of any significant compliance issues or likely changes ahead of the renewal process.

4.3.2 Changes to thresholds for waste and resource recovery (A13) permission activity

Issue

While supportive of the new permission requirements for waste and resources recovery activities, a few submissions from local government, the waste industry and consultants suggested larger volumes of waste should be allowed without a permission, or larger volumes for each permission type (registration, permit or licence). They suggested the proposed volume thresholds are low and obtaining a permission would introduce administrative burden and increase operating costs. This may lead to an increase in incentive for illegal dumping or impact their ability to provide municipal waste services.

Response

No increases were made to the volume thresholds applying to requirements for permissions in the proposed final Regulations. These permissions are a critical part of the new environment protection framework and will enable EPA and the Government to minimise the risks of harm to human health and the environment from mismanagement of waste.

Permissions for waste and resource recovery activities are required to acquit the duty under the new EP Act to take all industrial waste to a lawful place. The thresholds are set to introduce better oversight of waste and resource management facilities and are based on factors that impact risks of harm to human health and the environment from waste. These factors include the type of waste received, the volume of waste stored, and tonnage of waste received each month.

The Government considers that the administrative burden and costs associated with volume thresholds in permissions are proportionate to the risk posed by the different waste and resource recovery activities. The permission tiers ensure that the lower risk, smaller sites are covered by the lowest burden permission tools. Larger, higher-risk sites require the stronger oversight that permit and licence requirements enable.

Further, the new requirements introduced through permissions under the new EP Act will only have a minor impact on regulatory costs for those waste and resource recovery operators who have been applying robust environment protection practices under the existing waste management policy. These responsible operators represent most of the sector.

4.3.3 Relationship between contaminated soil (Category D) permit and definition of project site

Issue

Several submissions from the infrastructure and construction industry generally supported that reuse and containment of lower-level contaminated soils (Category D waste soils) within a project site should be a new permission activity.¹² Submissions expressed that this flexibility to safely reuse soil within a major project site would minimise waste soils requiring treatment or disposal to landfill.

However, they stated that the proposed draft definition for a 'project site', that is one limited to a single location, would restrict their ability to legitimately use relatively low-level contaminated soil as part of major development projects spanning multiple locations. They noted the proposed definition was dependent on a developer or proponent obtaining a planning scheme amendment. This would mean the permit is not accessible for many large-scale infrastructure projects that do not require a planning scheme amendment and often span multiple disconnected parcels of land.

Without access to this permit (which is only available for containment of Category D soils within a project site) the soils would need to go to a landfill facility instead of being reused and managed across the project site.

Response

The proposed final Regulations now more broadly define 'project site' to enable lower-level contaminated soils to be contained or reused and appropriately managed across large-scale public infrastructure projects. The new definition enables EPA to define a project site as a place at which 'public works' are being undertaken, as defined by the *Environmental Effects Act 1978*, and can include disconnected parcels of land being managed as a single public infrastructure project.

The purpose of the new contaminated soil (Category D) permit is to facilitate legitimate and flexible use and containment of relatively low-level contaminated soils as part of a major development or project. Such projects often produce high volumes of relatively clean soil. This soil can be used in nearby geographical locations as part of the project, without needing treatment, reducing the impact of these projects on waste soils going to landfill.

¹² Australian Contaminated Land Consultants Victoria, CPB Contractors, John Holland, Minerals Council of Australia, VicTrack and Viva Energy Australia Pty Ltd

4.3.4 Exemptions from requiring a permission

Issue

A few submissions from water corporations and industry were concerned the draft regulations did not clearly continue to allow existing exempted activities. Specifically, submissions expressed concern that:

- the draft regulations for general exemptions for certain discharges to the atmosphere may risk bringing a number of existing exempt sites into the permissions regime
- exemptions under the EP Act 1970 for approved Environment Improvement Plans for reclaimed water and biosolid schemes were not effectively translated into the draft regulations.

Response

The draft regulations were designed to generally preserve existing exemptions and permitted activities, taking into account differences in tools available under the EP Act 1970 compared with the new EP Act.

In response to submissions, minor changes have been made to the draft regulations to better reflect this intent, these changes are to:

- retain existing exemptions for modifications to discharges or emissions to the atmosphere
- retain the existing exemption in relation to emissions solely to air under the *Mineral Resources (Sustainable Development) Act 1990*
- retain the existing exemption for wastewater or biosolid 'supply or use' permits for those users that are receiving from a permitted wastewater or biosolid supplier
- better distinguish between wastewater classes that require a permission and exempt schemes that only use Class B or C wastewater below the 1 megalitre per day threshold.

However, the proposed final Regulations do not include the existing general exemption for certain discharges to the atmosphere. Instead, EPA will develop a determination under Section 48 of the new EP Act to specify requirements for a person to follow as an alternative to being required to hold a permission. The determination will reflect the existing use of the general air exemption in specified circumstances and below prescribed thresholds. Where no determination exists for a specific activity, a person can apply to EPA for an exemption from a permission. EPA can then assess the exemption applications case-by-case.

4.3.5 Temporary storage of asbestos

Issue

Several submissions from water corporations requested a registration (A22 – Temporary storage – asbestos) to allow for the volume of stored asbestos to be greater than 10 cubic metres and storage time to be set at 120 days.

While some water corporations stated the proposed 60-day limit is appropriate, others thought the volume and time restrictions would increase transport costs due to the need for multiple trips for smaller amounts of asbestos.

Response

No change to the volume or storage requirements for these registrations has been made. These requirements are consistent with the existing regulatory framework under the EP Act 1970, the current OHS Regulations and the *Compliance code: Managing asbestos in workplaces*. Any changes would conflict with these Victorian regulations for asbestos management and existing practices.

4.3.6 Clarifying when a financial assurance is required

Issue

Several submissions from local government, water corporations and government stakeholders sought exemption from providing a financial assurance. Others requested clarity on when a financial assurance would be required and how the amount would be calculated.

Response

The proposed final Regulations do not provide any new exemptions from financial assurances. These are an important mechanism in the new EP Act that ensure there is funding set aside to meet any future liability for the remediation and clean-up of land. The provision of a financial assurance is also in line with the environmental protection principle that the 'polluter pays' — the person who has caused the harm to human health and the environment should be financially liable. Financial assurances provide incentive for permission-holders to act responsibly and minimise the risks of the cost of clean-up resting on taxpayers and the community.

The new EP Act sets out matters EPA must have regard to when calculating the amount of financial assurance. EPA will publish information that will provide more detail about this. The regulations prescribe permission activities for which a financial assurance may be necessary. The requirement for, and amount of, the financial assurance may then be a condition within the permission.

The proposed final Regulations specify risk assessment criteria that EPA can consider when exercising its discretion for when a financial assurance may be required. The criteria include matters such as the clean-up risks posed by the activity, compliance history of the person, financial capacity of the person to clean-up, likelihood of abandonment and costs of remediation or clean-up.

4.3.7 Clarifying scope of definitions or activities

Issue

Several submissions sought further definition of specific terms to make it clearer whether a permission was required. These terms included:

- 'large containers' where the draft regulations defined which containers, contaminated with hazardous residues, are banned from landfill
- 'negligible quantities' where the draft regulations defined which e-wastes are banned from landfill
- 'tunnel ventilation systems' also described as 'road tunnel ventilation systems'.

Response

Where necessary, the proposed final Regulations include a number of minor changes, including:

- further detail on which large containers are banned from landfill
- matching the activity name to its description 'road tunnel ventilation systems'.

The proposed final Regulations now define which 'large containers' are banned by referring to the type and size of containers banned when contaminated with reportable priority waste. This aligns with the intent of the ban to include containers contaminated with solid and sludge wastes that require special handling.

The proposed final Regulations do not define 'negligible quantities' of e-waste as this term is one in common use across regulatory frameworks and the existing regulations.

4.3.8 Level of fees and fee design for permissions

Issue

Some submissions from local government, community groups and industry suggested that some fees were too high and other fees should not be required because they are unreasonable or not proportionate to EPA's regulatory and administrative costs and may drive avoidance or noncompliance. These included fees for:

- applications to surrender operating licences
- review or release of a financial assurance
- applications for permits
- accredited consigner appointments
- waste-related activities (especially smaller waste management facilities).

Some submissions supported the introduction of a load-based licensing system to provide an economic incentive to reduce pollution, enable fees to reflect the indirect health costs arising from industry activity and be consistent with the principle of polluter pays under the new EP Act.

Response

In responding to these concerns, minor corrections and adjustments were made for some fees set under the proposed final Regulations, however, no significant changes were made.

Minor adjustments to fees were made to further support the efficient and equitable recovery of costs in accordance with the Victorian Government's *Cost Recovery Guidelines*.¹³ Changes included refining estimates to better reflect EPA's recoverable costs and minor corrections to ensure a consistent approach to rounding and use of fee units in all instances. Four fees were reduced by 2 to 30 per cent while three fees increased by between 0.33 and 5 per cent. It is estimated that these changes will increase EPA's total revenue by \$4,900 shared across an estimated 620 applications.

The fees have not increased materially since their previous review in 2012. The EPA Inquiry noted that a recent review by PwC Australia found evidence of significant under-recovery of some costs.¹⁴

¹³ Available at: <https://www.dtf.vic.gov.au/financial-management-government/indexation-fees-and-penalties>

¹⁴ EPA Victoria 2015, *Cost and capacity review, final report*, internal working report prepared for EPA by PwC Australia, November, pp. 21–22 as cited in EPA Inquiry Report, page 380

The fees in the proposed final Regulations ensure the efficiency and equity of fees and apply the principle that those who trigger the need for regulation bear the costs of administering and enforcing it.

The Government's response to the EPA Inquiry agreed to consider load-based licences for specific problems, or to encourage performance and practice. It has not introduced load-based licensing, providing more certainty to permission holders, and new applicants while adapting to the new framework. The Government will assess introducing this fee structure after insights are gathered from the new activity-based approach to permissions.

Consistent with existing regulations, the annual fee for licence holders operating a landfill that receives, discharges and deposits solid waste to land will continue to be based on the number of tonnes of waste received in a year. As such, large scale operators will continue to pay a higher fee than small scale industry peers.

4.4 On-site wastewater management systems

Part 3.3 (Permits) of the proposed final Regulations sets out permit requirements and exemptions for the construction, installation and alteration of OWMS. Under the EP Act 1970, local government plays a significant role in the regulation of OWMS.

The draft regulations continued the reliance on local government as the primary regulator for OWMS. They enabled local government to issue a permit to construct, install or alter OWMS with flow rates of sewage not exceeding 5,000 litres on any day, set out matters that councils must consider in applications, and requirements for councils to refuse an application in certain circumstances, such as where systems were not of a type approved by EPA. In line with the EP Act 1970, the draft regulations continued to require local government to submit annual returns on OWMS in their municipality.

The draft regulations did not include direct regulations or further permit requirements for the ongoing operation and maintenance of OWMS. Instead, risks of harm to human health and the environment from OWMS were proposed to be managed by local government under the GED.

Many submissions, primarily from local government, raised significant concerns that the proposed environment protection framework did not sufficiently manage risks of harm to human health and the environment posed by OWMS. Following

public comment significant changes to the draft regulations were made to ensure local government can regulate those risks.

Several submissions also raised implementation issues — including requirements for guidance, education and support to comply, and clarity regarding roles and responsibilities between co-regulators. See Chapter 6 on the approach to implementing the new environment protection framework, including guidance and working with co-regulators.

This section responds to the following key concerns:

- reliance on the GED as the key regulatory control for the maintenance and operation of OWMS
- ability for local government to recover costs for permits to construct, install and alter OWMS
- ability for local government to recover costs to regulate the operation and maintenance of OWMS
- enforcement for failure to obtain a permit
- duration of permit to construct, install or alter an OWMS
- definition of 'alteration'
- administrative burden to provide annual returns.

4.4.1 Reliance on the GED as the key regulatory control for the maintenance and operation of OWMS

Issue

Many submissions from local government, community members, consultants and environmental health professionals expressed concern that householders (who operate most OWMS in Victoria) would not understand how to comply with the GED. They were concerned that knowledge among these duty holders on how to manage the risks of OWMS to human health and environment is low and highly variable.

Submissions also noted that local governments may be limited in what they could regulate and enforce under the GED. Submissions noted that local government could not take proceedings for breaches of the GED, or breaches of remedial notices issued under the new EP Act and would instead have to rely on EPA for legal sanctions and enforcement.

To resolve these issues, submissions requested that a permit be required for the ongoing operation and maintenance of OWMS. This permit would need

renewal every five years, in line with the maximum duration of a permit under the new EP Act. It would also be an offence to breach the permit or operate without one.

Submissions were concerned the draft regulations did not provide revenue to cover costs incurred by local government to regulate the operation and maintenance of OWMS. They suggested a permit for operation and maintenance would be low-cost to landowners, while providing some revenue for local government to play an active role.

Response

A new section has been included in the proposed final Regulations to reduce reliance on the GED and provide greater certainty and clarity for households and local government regulators. This new section sets clear obligations on persons in management or control of land on which an OWMS is located. These changes introduce:

- new duties for the operation and maintenance of OWMS
- a duty to keep maintenance records and requirement to respond to problems
- a duty to notify local government of system failures
- the ability for local government to order maintenance of a system if it poses a risk to human health or the environment or is not in good working order.

The proposed final Regulations also set out offences that are enforceable by local government for breach of these duties. These changes will better empower local government to manage and enforce risks to human health and the environment from OWMS.

The proposed final Regulations apply to all new and existing OWMS, including legacy systems. Most legacy systems were built before 1988 when there was no requirement for a permit to construct or install them, or for the types of systems to meet relevant standards such as Australian standards or any specifications by EPA.

The proposal in many submissions to address these risks through a new recurring five-year 'permit to operate' an OWMS was not adopted. This is because direct regulation:

- effectively manages the risks to human health and the environment from OWMS without the higher cost to households that a permit would impose

- provides a more consistent and predictable set of obligations on all systems, while still allowing for newer systems to be held to a higher standard of environmental performance
- better accommodates the varied status of legacy systems by allowing progressive improvement as opposed to significant upgrade or replacement of an OWMS that would be a likely consequence of initiating universal requirements for operating permits
- enables offences that are proportionate to any risk posed by breaching the duties set out in the proposed final Regulations.

4.4.2 Ability for local government to recover costs for permits to construct, install and alter OWMS

Issue

Many submissions from local government stated the fee regime in the draft regulations was inflexible and did not adequately enable local government to recover costs for processing a permit to construct, install or alter an OWMS. Submissions expressed particular concerns about the capped variable fee design, which may result in those located further from local government offices paying more due to longer travel times. Some submissions highlighted the need to waive fees in certain circumstances, such as hardship or natural disaster.

Some submissions from local government provided new data not previously available during the development of the draft regulations.

Response

The fee structure set in the proposed final Regulations reflects the new data provided by local government, and better provides for cost recovery.

While the application fee remains a variable capped fee, new flat fees have been introduced. The proposed final Regulations also enable local government to waive, or refund, the whole or part of any fee.

To improve cost recovery, the maximum permit application fee is now set at 135.43 fee units as opposed to 69.75 units set in the draft regulations.

New flat fees have been introduced to support cost recovery and to reflect simpler applications. They are available for:

- permit applications for minor alterations, to ensure costs for permits to alter OWMS are not over-recovered
- applications to amend, transfer or renew OWMS permits.

Local government can further promote transparency and predictability, and reduce the potential for dispute, by providing guidance on typical fees and which activities form part of their recoverable cost base.

Changes have also been made to enable local government to waive or refund all or part of any fee payable to them under the new EP Act or proposed final Regulations where reasonable. Local government is responsible for determining how to best manage and communicate any instances where this power will be exercised such as during disaster recovery or in hardship.

4.4.3 Ability for local government to recover costs to regulate the operation and maintenance of OWMS

Issue

Many submissions from local government were concerned the draft regulations did not enable them to recover costs associated with regulating the operation and maintenance of OWMS, including costs associated with compliance and enforcement. They suggested a permit for operation and maintenance would be low-cost to landowners, while providing a stable revenue for local government to play an active role.

Response

Although the proposed final Regulations now better reflect costs relating to application for permits, they do not include additional fees to recover costs relating to councils' ongoing role to regulate the operation and maintenance of these systems.

Although some submissions expressed concern at the potential for the draft regulations to increase their regulatory costs, the proposed final Regulations reflect the current responsibility for local government to regulate the operation of OWMS under the EP Act 1970. The new legislation does not introduce an additional regulatory role for local government but provides greater clarity on the expectations for duty holders. It is not anticipated that the new environment protection framework will increase overall ongoing costs for local government.

EPA is committing significant resources to support business, local government and the community to implement the new environment protection framework. EPA will support local government to implement the environment protection reforms through ongoing engagement and guidance material.

4.4.4 Enforcement for failure to obtain a permit

Issue

Several submissions were concerned the draft regulations did not include an offence for failure to obtain a permit for the construction, installation or alteration of an OWMS.

Response

Changes were not considered necessary as the new EP Act already sets out an offence for anyone who undertakes an activity without a permission (licence, permit or registration) when required under the new EP Act and proposed final Regulations.

4.4.5 Duration of permit to construct, install or alter an OWMS

Issue

Submissions from local government and an environmental health consultant raised concern that the five-year duration of a permit to construct, install or alter an OWMS is out of step with local government's usual two-year period for domestic building permits.

Response

The proposed final Regulations allow the duration of an OWMS permit to be between two and five years, or to the date the certificate approving use of the system is issued, if earlier than five years. The maximum period a permit may remain in force under the new EP Act is five years.

This change allows local government to align the OWMS permit duration with time frames for building permits while maintaining consistency with the new EP Act.

4.4.6 Definition of 'alteration'

Issue

Some submissions sought to clarify the definition of 'alteration' in the draft regulations to include any change to design or construction or change to hydraulic flow of the system.

Response

Minor changes in the proposed final Regulations clarify that an 'alteration' of an OWMS includes changes to its design or construction, and changes resulting in an increase to the hydraulic flow or organic load of the system. The proposed final Regulations also make clear that 'alteration' does not include general maintenance, as this would inadvertently require a permit.

4.4.7 Administrative burden to provide annual returns

Issue

Submissions from local government and environmental health professionals raised concerns that the requirement for local government to submit annual returns to EPA was overly burdensome for little benefit. Annual returns are a report on OWMS permits issued, systems disconnected, inspected and used within the municipality.

Response

The proposed final Regulations no longer include the requirement for local government to submit annual returns. Despite this, local government will need to retain such records to comply with the *Public Records Act 1973* and as a matter of general administration. They will also need to hold some of this information as part of implementing their domestic wastewater management plans. If not publicly available, EPA may request this information under information gathering provisions of the new EP Act.

Box 1: Waste duties in the new EP Act

In addition to the GED, the new EP Act sets out several specific waste duties for persons:

- depositing industrial waste
- receiving industrial waste (including being authorised to receive the waste or becoming a 'lawful place')
- involved in transporting industrial waste
- managing priority waste
- to investigate alternatives to disposal of priority waste
- to notify of transaction in reportable priority waste
- transporting reportable priority waste.

4.5 Waste

Chapter 4 (Waste) of the draft regulations set out how the waste duties in the new EP Act (see Box 1) are to be met by duty holders and apply to businesses that generate, transport or receive industrial waste. The draft regulations support the waste duties by providing a framework for duty holders to classify, consign, transport and receive waste. More information on the new waste duties is available on the EPA website¹⁵

The proposed final Regulations set out when:

- requirements apply for each type of waste — industrial, priority or reportable priority waste
- how to classify waste as industrial, priority or reportable priority waste, including classifying waste using the Waste Classification Assessment Protocol (Waste classification protocol)
- a person may apply to EPA for, or EPA may itself issue, a designation to classify the waste
- to classify priority waste into categories for disposal to landfill
- to classify soil
- a person, place or premises receiving industrial waste could be considered a 'lawful place' authorised to receive industrial waste under the new EP Act via:
 - the permissions framework (see Section 4.3)
 - the DoU tool
 - specific provisions in the regulations
 - determinations made by EPA to establish lawful place for materials destined for use.

Chapter 4 (Waste) of the draft regulations also defined dangerous litter and limitations on depositing, or affixing unsolicited documents, and other litter offences. It also set out processes for the appointment of accredited consigners, requirements relating to used packaging materials and addressed Regional Waste and Resource Recovery Implementation Plans.

Many submissions were received on the draft waste regulations from businesses, peak bodies representing agriculture, organics and composting sectors.

Submissions were also received from local government and other government agencies.

Generally, these submissions requested clarity, guidance or education to support compliance with the waste framework. Chapter 8 outlines EPA's approach to implementing the new environment protection framework.

¹⁵ For more information see the EPA website at <https://www.epa.vic.gov.au/for-business/new-laws-and-your-business/manage-waste>

Other submissions detailed concerns about how to implement aspects of the draft regulations, unintended consequences or administrative burden that would arise. Submissions indicated the draft regulations may limit reuse and hamper the Government's *Recycling Victoria*¹⁶ policy goals to reduce waste to landfill.

This section responds to the following key concerns:

- waste classification
 - thresholds for determining waste classification
 - PFAS soils
 - trade waste
 - prohibition on mixing, blending or diluting priority waste
 - transition of waste classifications under the existing scheme
- lawful place:
 - declarations of use
 - municipal versus industrial waste
 - product stewardship and government collection schemes and projects
 - waste acid sulfate soils (WASS)
- new waste codes to clarify management of end-of-life vehicles
- naturally elevated contaminants, or elevated due to historical land use
- transport of wastes which can be classified as dangerous goods
- landfill design and operation
- waste levy payment terms
- on-site Category D waste.

Table 2: Summary of issues raised about waste classification and categorisation

Key issue	Change made
Description of the waste code for tyres (T140) is too simple and does not allow for damaged, partial or crumbed tyres.	The description for T140 in the proposed final Regulations includes tyre pieces greater than 250 millimetres in size. A new waste code, T141, has been added for tyres shredded into pieces less than 250 mm.
Thresholds to determine the category for wastes with a certain pH in the WDC document were too narrow and did not account for natural pH levels in Victorian soils. Submissions stated Victorian soils have natural pH levels above nine, and so should be Category C waste soils.	To ensure these wastes are appropriately categorised and align with the existing waste framework, the final WDC document classifies wastes with a pH between 10 and 12.5 as Category C, instead of a pH between nine and 12.5.
Lower bound thresholds for some contaminants were missing from the WDC document, meaning low-risk wastes would be too highly categorised.	The proposed final Regulations enable EPA to issue designations to change the classification of the soils to 'fill material' where the soil is sourced from areas that are naturally elevated or elevated due to historical land use. EPA can issue a designation to reclassify the soil where the use would not contribute to raising background contamination.
Volumes of solid organic waste (including contaminated material) greater than 5m ³ classified as reportable priority waste could result in increased burial or stockpiling to avoid new obligations and prevent reuse opportunities.	The upper limit for the deemed lawful place threshold for manures was increased from 5m ³ to 20m ³ per month. Under the GED, regardless of volume, all reasonably practicable steps must be taken to manage risks of harm to human health and the environment.

¹⁶ More information on this policy can be found at <https://www.vic.gov.au/transforming-recycling-victoria>

4.5.1 Waste classification — thresholds and categories for classifying waste

Under the proposed final Regulations a designation is equivalent to what was referred to as a waste classification under the existing regulations. Several submissions across industry, local government and water corporations identified issues with how waste was proposed to be classified and categorised. There was concern these issues would impact on the ability to properly classify waste and therefore appropriately reuse or dispose of that waste. The issues raised are summarised in Table 2.

4.5.2 Waste classification — PFAS soils

Issue

Some submissions from industry stated that including PFAS contaminant thresholds in subordinate legislation (WDC document) would not suit the evolving science on this contaminant, be rigid and inconsistent with the more flexible approach in the PFAS National Environmental Management Plan (PFAS NEMP) and EPA's *Interim position statement on PFAS* (publication 1669). Submissions argued that the proposed thresholds would unnecessarily result in greater volumes of soil being classified as Category D, creating a significant burden on landfills and limiting reuse options.

Response

The thresholds for PFAS have been removed from the proposed final WDC document, to allow flexibility to keep pace with the evolving science. PFAS contamination will be assessed on a case by case basis in line with the best available science, consistent with the PFAS NEMP.

The Government supports a precautionary approach to PFAS as they are persistent, accumulative and mobile. EPA seeks to minimise PFAS in the environment wherever possible in accordance with the PFAS NEMP. The approach to PFAS-impacted soil for reuse is conservative based on current understanding of the science and risk.

4.5.3 Waste classification — trade waste

Issue

Several submissions from industry and water corporations were concerned that the draft regulations classify trade waste as industrial, priority or reportable priority waste. Submissions were concerned this may significantly increase the compliance burden for water corporations, compared to the existing regulations, due to requirements for permissions, or lawful place duties for disposal of waste under the new EP Act. They

requested trade waste be excluded from the definition of industrial waste.

Response

The classification of trade waste as industrial waste has not changed in the proposed final Regulations. Excluding trade waste from the waste framework would remove a key control necessary to manage risks to human health and the environment. To adequately manage and control these wastes it is necessary to classify trade waste as either industrial, priority or reportable priority waste and ensure it is disposed at a lawful place, as required by the new EP Act.

The existing regulations exempt trade waste where it is discharged into a water corporation's sewer system in accordance with a trade waste agreement under the *Water Act 1989*. The proposed final Regulations do not exempt such waste, but instead deem a water corporation's sewer system to be a lawful place. Despite this, the GED continues to apply to activities related to trade waste, including to the management of trade waste associated with a trade waste agreement. The GED applies alongside the obligations in a trade waste agreement.

The terms of discharge to sewer would be governed by the trade waste agreement and subject to the capacity of the water treatment plant at which the waste is treated. Water authority operating licences will then set out the necessary conditions by which they should control and manage risks from trade waste.

4.5.4 Waste classification — prohibition on mixing, blending or diluting priority waste

Issue

Some submissions from local government, industry and a water corporation were concerned that the prohibition on mixing, blending or diluting priority waste had the potential to limit the ability to use waste in waste-to-energy projects, or for other reuses. It appeared to prohibit strategic mixing to obtain the best output from a specific process.

Response

The proposed final Regulations now enable a duty holder to apply for a designation, or for EPA to initiate and issue a designation to mix, blend or dilute waste to a lower-risk category where there is a legitimate reuse. This offers a more flexible and proportionate approach that supports innovation and good environmental performance. EPA can impose management conditions on these designations to ensure the waste is managed appropriately.

4.5.5 Waste classification — transition of waste classifications under the existing scheme

Issue

There was some concern from industry that the period provided by the transitional regulation to 'save' waste classifications of specific application made under the *Environment Protection (Industrial Waste Resource) Regulations 2009* was too short, providing only a one year continuation in most circumstances. They felt this would impact on existing commercial arrangements and sought an additional year to increase business certainty and aid adaptation to the new framework.

Response

The proposed final Regulations provide greater continuity for existing classifications of specific application made under the *Environment Protection (Industrial Waste Resource) Regulations 2009*. Those in place at the commencement of the EP Act will now have continued effect for two years from commencement.

4.5.6 Lawful place — declarations of use

Issue

Many submissions from across industries, including composting, agriculture, and construction and development supported the general intent behind a DoU but believed the burden of completing a DoU was disproportionate to the risk imposed by many wastes. They indicated this would be a disincentive to compost or use materials derived from wastes.

Submissions recommended:

- the receiver should not need to complete a DoU, and instead only need to agree to the DoU developed by the generator
- those who generate and use their own waste on-site should not require a DoU.

Examples of waste that this could impact include:

- on-site treatment or containment of fill material
- organic wastes that are composted
- organic wastes that are reused as animal feed, notably because stock feed is regulated by agricultural regulations and requiring a DoU for this waste type introduces regulatory overlap
- frass and vermiculture waste.

The draft regulations also limited temporary storage of fill material to 60 days under a DoU. Submissions considered 60 days impractical for construction projects given many major projects can run for several years. They recommended this 60-day limit be removed.

Response

Under the new EP Act, the duty to deposit waste at a lawful place will apply to all industrial wastes, including those that are intended for reuse or recovery.

A DoU is the tool proposed to support safe storage, reuse and recovery of lower-risk industrial wastes and encourage information sharing in the reuse and recovery market. It is a peer-to-peer instrument that will involve a self-assessment to describe the waste, assess its risks and identify legitimate use, and an acknowledgment by the receiver who then becomes authorised to receive the waste. A DoU is intended to offer a balanced and flexible tool to facilitate the safe and innovative use of waste materials that have been historically mismanaged, leading to contamination and unsafe stockpiling over time. A DoU is not required to be lodged with EPA but must be provided to the regulator if required. Storage, reuse and recovery of higher-risk wastes will require an EPA permission.

In response to significant industry concerns, the proposed final Regulations are simpler and clearer in the following areas:

- The provider of the waste is no longer required to set out the purposes and circumstances in which the waste can be used. Therefore, receivers of waste via a DoU do not need to agree with the provider on circumstances for legitimate reuse but simply consent that the place or premises is suitable to receive it.
- Fill material generated and reused within the same cadastral boundary does not need a DoU.

EPA has also identified several common low-risk wastes — such as fill material, processed solid organic wastes, manures and construction and demolition aggregates — for which a DoU presents a significant, disproportionate burden on duty holders due to the frequency of reuse transactions for these materials each year. EPA will develop publicly-available determinations for these wastes that set out specific management and safety criteria.

Duty holders will not need to complete a DoU for transactions made with these wastes if they meet the management and safety criteria set out in the determination. Where determinations have not been made for a waste, a duty holder must complete a DoU, or send to a permissioned site for further processing.

The 60-day limit for temporary storage of fill material has also been removed, given the low risk posed by these materials. This will instead be addressed through the making of a determination.

4.5.7 Lawful place — municipal versus industrial waste

Issue

Some submissions expressed concern that the draft regulations deem municipal waste (waste from domestic sources) as industrial waste once aggregated at a transfer station. This is not required under the existing regulations. Submissions were concerned this introduced new administrative and compliance burdens, such as increases in levies and fees, obtaining a permission and ensuring waste is disposed at a lawful place.

Response

The proposed final Regulations continue to deem municipal waste aggregated at transfer stations as industrial waste. The relevant waste duties and permission requirements will apply.

While the Government recognises complying with these duties and obtaining appropriate permissions may impose some additional burden, this waste has proven difficult for EPA to monitor and manage. Classifying this waste improves visibility and allows EPA to require compliance with certain standards for management, reuse or disposal.

The permissions framework will also capture sites that receive municipal waste. The framework will use a risk-based approach that recognises that smaller volumes of waste pose comparatively lower risks than larger volumes. As such, the permission requirements will be commensurate to the risks — small volume low-risk sites will require a registration, while larger sites, or sites accepting higher-risk wastes, will require a permit or licence to allow for greater oversight and bespoke management by EPA.

It is important to note that waste of a municipal origin will continue to attract the municipal levy rate. Despite an industrial classification for management purposes, local government may indicate to a landfill that a waste is sourced from a municipal collection. A landfill can charge the appropriate levy and retain evidence provided to submit a levy statement indicating the source of the waste and the levy charged.

4.5.8 Lawful place — product stewardship and government collection schemes and projects

Issue

Several submissions from those involved in product stewardship schemes and government-run waste collection programs, including local governments, were concerned the draft regulations would require permissions for their small local drop-off or collection points.

These facilities receive and store small quantities of priority or reportable priority wastes from domestic and some trade sources. Given the small quantities handled at drop-off or collection points, submissions considered the cost and administrative burden to obtain permissions and comply with priority and reportable priority waste duties to be undue and prohibitive.

Under the existing regulations one scheme operates under a classification that reclassifies the waste from hazardous to non-hazardous when handling small volumes. Submissions highlighted the important role these schemes play to facilitate appropriate disposal or reuse of priority and reportable priority wastes, particularly from domestic sources.

Response

The proposed final Regulations now enable a duty holder to apply for a designation, or for EPA to initiate and issue a designation (equivalent to a 'classification' under the existing regulations) to reclassify priority or reportable priority waste to not priority waste. This will enable drop-off and collection points with an EPA issued designation to collect specified types of waste without a permission. Transfer stations will be able to collect the waste under their existing permission.

This change recognises that small volumes of waste can be managed safely under the supervision of a product stewardship scheme with the relevant management conditions.

Waste volumes at these drop-off and collection sites will be subject to conditions contained within the designation and deemed not priority waste, and relevant waste duties under the new EP Act and the proposed final Regulations will apply.

EPA will ensure that transfer stations will be able to collect specified reportable priority wastes. An appropriate regulatory instrument will be created to enable the collection of waste types such as waste oils, including conditions that detail safety precautions for storing these types of wastes.

The Government acknowledges the importance of these schemes to encourage and facilitate appropriate reuse and disposal of these wastes. Local collection stations remove the burden of disposal from the community and ultimately reduce waste being disposed to landfill or being dumped.

4.5.9 Lawful place — waste acid sulfate soils

Issue

Several submissions from the development industry, business associations and consultants identified that the draft regulations were not clear on the treatment of WASS as a waste type. They were concerned this would make it difficult to:

- acquit lawful place duties under the new EP Act
- appropriately manage and dispose of these waste soils.

Under the existing regulations requirements for disposal and treatment of WASS are specified in the *Industrial Waste Management Policy* (WASS). The draft regulations did not specifically consider WASS. However, submissions expressed concern about controlling the risks from WASS, which require specialist handling.

Response

The proposed final Regulations include a new waste code for WASS that is not otherwise contaminated that exceed the upper limits for fill material. This will enable waste classification and set clear and transparent requirements for the receipt, treatment and disposal of WASS. Lawful place will be acquitted through the permissions framework including a new prescribed registration activity for receiving WASS for treatment or amelioration. These soils require specialist handling and management, due to unique risks that arise when exposed to air. As such, only specialists can lawfully accept, treat and manage the waste soil.

4.5.10 New waste codes for managing end-of-life vehicles

Issue

A submission expressed concern that end-of-life-vehicles are not identified as a specific waste stream. These are a significant waste product in Victoria and nationally, with substantial volumes disposed of each year. The submission identified that many within their industry may not realise that end-of-life vehicles are considered an industrial waste, and that they may require a permission, or to comply with other duties under the new EP Act.

The submission identified this lack of awareness could result in mismanagement of end-of-life vehicles and recommended a new waste code.

Response

The proposed final Regulations include a new waste code for end-of-life vehicles to clearly identify and recognise these as an industrial waste. The code will include various transport vehicle types (including off-road machinery) and wastes from their dismantling and maintenance.

This does not change EPA's approach to regulating end-of-life vehicles but clarifies that they are an industrial waste. The waste duties continue to apply, including appropriate disposal at a lawful place, and facilities receiving this waste may require an A13 permission. The waste code is intended to apply to any end-of-life vehicle that fits the waste definition, including statutory write-offs that are no longer fit for their intended use and are surplus to needs.

4.5.11 Elevated contaminants due to naturally occurring or historical land use

Issue

Several submissions from industry and local government and an environmental consultant requested that existing background levels of contaminants be considered in contaminated soil classification. For example, whether contaminants occur naturally, such as nickel in basalt through parts of Melbourne, or due to historical use, such as arsenic in soils around goldmining regions. They also requested the ability to reuse soils at sites with the same elevated background levels as the waste soil.

Without these changes, submissions noted these soils would be categorised as contaminated, limiting their ability to be reused, driving more to landfill and increasing compliance costs for industry.

Submissions also sought clarity on how to classify waste soils and dispose of them at a lawful place.

Response

The proposed final Regulations now enable EPA to issue designations to change the classification of these soils to 'fill material' where they are sourced from areas that have naturally elevated, or historically elevated contamination due to land use. Duty holders may apply to EPA for designations which will be assessed case-by-case. EPA may also initiate and issue a designation. The fill material must be used within the same area that has the same level of contaminant. If the soil is moved outside the area defined in the designation, normal classification criteria, associated waste duties and limitations on use will apply.

Under the contaminated land framework EPA can make a determination to set an alternate background level for certain contaminants in certain regions. These determinations only apply to the duties to notify or manage contaminated land. They cannot be used to classify waste soil for use, treatment and/or disposal — soil with elevated contaminants should not be disposed or reused offsite in locations with lower concentrations.

EPA will issue a designation and/or determination to allow for reuse of this material under specified conditions. This aligns with the existing approach and classification for these soils. Also, once a soil has been reclassified by a designation, any determination for fill material, such as those discussed in Section 4.5.6, would apply, subject to any conditions of the designation.

Where a designation has not been made the waste is classified in accordance with the proposed final Regulations and relevant waste duties will apply. Duty holders can apply to EPA for designations case-by-case, which is similar to the existing process.

4.5.12 Transport of dangerous goods

Issue

Several submissions from government stakeholders and a consultant stated that the draft regulations should require dangerous goods training for drivers of waste transport vehicles carrying wastes that can be classified as dangerous goods. This change would align with requirements in other jurisdictions and with those under the DG Act.

A few submissions also identified that the draft regulations did not require vehicles transporting DG waste to bear a placard, as per the existing regulations.

Response

To align with the DG Act and reduce the risks of harm to human health and the environment from transporting waste, the proposed final Regulations impose obligations on permission holders that a driver must complete dangerous goods training, use load restraints and carry on-board documentation with information for emergency services in the event of an accident.

Placards are often specific to waste types and attached to specific vehicles, so that vehicle placarding requirements will need to be assessed case by case and managed through specific conditions in transport permissions.

4.5.13 Landfill design and operation

Issue

Several submissions from industry bodies expressed concerns about the regulation of the construction and management of landfills under the draft regulations. In particular, submissions:

- stated the requirement for landfill flares to achieve 'complete combustion' of landfill gas is not practical, nor realistic and recommended to change the requirements so complete combustion is not required
- considered operating standards that restrict leachate levels and methane gas action levels as too prescriptive — they indicated landfills not designed in accordance with the Best Practice *Environmental Management: Siting, design, operation and rehabilitation of landfills* guidelines would not achieve these standards
- raised concern the draft regulations do not restrict landfill construction in areas:
 - determined to have Segment A groundwater
 - where the landfill is to be built in areas less than 2 metres above groundwater.

Response

A change has been made to clarify the intent is for landfill flares to achieve adequate combustion. The proposed final Regulations now require 98 per cent destruction efficiency, or the minimum recommended residence time of 0.3 seconds at a minimum temperature of 1000°C.

The standards for leachate or methane gas release have not been altered. It is critical that all reasonable steps, as set out in the regulations, are taken to avoid exceeding the methane gas action limits and reaching explosive levels.

The proposed final Regulations do not include siting and construction standards (such as limits on construction in areas with Segment A groundwater) as these will be managed under specific sections of the EP Act 2017, the GED and through the requirements for obtaining development licences.

4.5.14 Waste levy payment terms

Issue

Several submissions from the waste industry and local government commented that the requirement for payment of the waste levy to EPA within 21 days was not practicable given current commercial arrangements. They requested maintaining the status quo of 90 days (64 business days). Submissions indicated it is unlikely that landfill operators would have received payment within 21 days. They stated this would force them to borrow money to pay EPA while awaiting customer payments.

Response

The payment terms in the proposed final Regulations are now set at 64 business days (90 days), in line with the existing regulations.

4.5.15 Category D waste on a project site

Issue

Several submissions from the waste industry and local government were not clear on whether the waste levy would be imposed on Category D waste retained on a project site.

Response

Where Category D soils can be safely contained within a project site that is appropriately permissioned by EPA, a waste levy will not apply.

4.6 Air

Part 5.2 (Air) of the draft regulations included requirements related to National Pollutant Inventory reporting, regulation of solid fuel heaters, protection of the ozone layer and the management of Class 3 substances (as listed in Schedule 4 of the proposed final Regulations).

Many submissions were received on the draft air regulations from community members, community groups, environmental advocacy organisations, industry, local government and other government bodies.

Submissions were mainly concerned with the sufficiency of the draft air regulations to protect both human health and the environment from greenhouse gas (GHG) emissions, planned burns and timber harvesting burns, as well as wood heating and solid fuel heaters.

This section responds to the following key concerns:

- regulation of GHG emissions
- air quality impacts from planned burns and timber harvesting burns
- regulation of wood heating and solid fuel heaters
- National Pollutant Inventory (National Environment Protection) Measures reporting requirements
- vehicle emissions
- lack of specific regulation for some risks to human health and the environment.

Submissions also commented on the Air section of the draft ERS. See Chapter 5 for the Government's response to these.

4.6.1 Regulation of greenhouse gas emissions

Issue

Many submissions from community members, community groups, environmental advocacy organisations and environmental auditors raised concerns that the draft regulations did not include a framework to regulate GHGs. Submissions were concerned this would impact air quality, climate change and human health and the environment. Several requested that the Regulations include requirements to manage GHGs.

Response

The Government considers reducing GHGs to be a matter for government policy rather than direct regulation under the environment protection framework. The Government's approach to reducing GHGs is set out in the *Climate Change Act 2017* (CC Act), which establishes a long-term emissions reduction target of net zero emissions by 2050 and a series of five-yearly interim targets and sector pledges to track the State's progress to its long-term target.

The Victorian Government is already taking strong action to reduce emissions. Victoria is on track to meet a target to reduce the State's emissions by 15-20 per cent below 2005 levels by 2020, and the Government is currently finalising its first set of interim emissions reduction targets for 2025 and 2030 and associated sectoral emissions reduction pledges. Action is being taken to accelerate investment in renewable energy, cut carbon emissions and create jobs as a part of the Government's work to get the economy back on track.

Key actions include:

- the *Renewable Energy (Jobs and Investment) Amendment Act 2019* which legislates for a Victorian Renewable Energy Target (VRET) of 50 per cent by 2030
- the \$1.3 billion Solar Homes program
- the Victorian Energy Upgrades program which has already delivered energy efficiency upgrades for approximately 1.8 million households and 100,000 businesses
- Recycling Victoria, a 10-year circular economy policy and action plan with funding of more than \$300 million which will cut emissions from landfills and support businesses to reduce waste.

The EPA will continue to acquit its obligations under Section 17 of the CC Act when making statutory decisions.

4.6.2 Air quality impacts from planned burns and timber harvesting burns

Issue

Some submissions from community members, community groups and an environmental advocacy organisation were concerned that the draft regulations did not adequately mitigate air quality and human health impacts from smoke arising from planned burns, the burning of harvested timber or other burning off. Environment and health advocates, community groups and community members described breathing difficulties, aggravated asthma and other medical difficulties due to these burns.

While some submissions noted the GED and increased monitoring should apply to these burns, one submission questioned whether planned burns should require a licence in the new permissions scheme.

Response

These risks to human health and the environment remain regulated through the new tools available under the new EP Act. Planned burning may be undertaken to reduce bushfire risk, enhance community safety, and achieve a range of ecosystem health, land management, and silvicultural objectives.

Burns may also be conducted or coordinated by local government, farmers and timber plantation companies.

Smoke from planned burning produces a range of air pollutants that have impacts on human health. Some people are particularly vulnerable to these pollutants due to their age, state of health, or where they live.

The GED will require people engaging in planned burning to take reasonable steps to reduce the risk of harm to human health and the environment from the smoke. These controls may include notifying potentially affected communities of planned burns or considering alternatives to burning where possible and appropriate. Fire managers also need to weigh up community impacts from planned burning, versus impacts — including smoke — arising from bushfires. The Government is preparing a Victorian Air Quality Strategy to tackle air quality challenges, including the impacts of smoke from planned burns.¹⁷

4.6.3 Regulation of solid fuel heaters

Issue

Several submissions from community members, local government and an environmental advocacy organisation supported regulation of solid fuel heaters. However, they all raised concerns relating to air quality and health impacts from poorly maintained or inefficient heaters.

One submission doubted if the Australia and New Zealand wood heater test standards, referenced in the draft regulations, resemble actual emissions and therefore would not meaningfully reduce air pollution from solid fuel heaters. Further, a local government suggested introducing regulations to require solid fuel heaters to burn efficiently but not to prohibit people in regional areas from using them. A community member suggested phasing out wood stoves and fires entirely.

The draft regulations prohibited the manufacture and supply of noncompliant solid fuel heaters. One submission suggested the draft regulations should also prohibit the installation of solid fuel heaters that are not compliant with the Australian/New Zealand standard.

Response

The suggested changes to the draft regulations have not been incorporated as these would duplicate existing regulations in Victoria or result in Victorian solid fuel heater standards that are inconsistent with the rest of Australia.

¹⁷ More information can be found at <https://www.environment.vic.gov.au/sustainability/clean-air-for-all-victorians>

The approach for the regulation of the manufacture and supply of solid fuel heaters is informed by the recent review of the *Waste Management Policy (Solid Fuel Heaters)* which led to a variation to the policy in late 2018. The review included public consultation and consideration of public submissions.¹⁸

The proposed final Regulations require wood heaters manufactured and sold in Victoria to comply with joint Australian/New Zealand emission and efficiency standards (AS/NZS 4012:2014 and AS/NZS 4013:2014). The proposed final Regulations do not prohibit the installation of noncompliant wood heaters as this is regulated by the Victorian Building Authority under the *Plumbing Regulations 2018*.

Solid fuel heaters are the only available form of heating in some areas of Victoria and therefore a phase out of wood stoves or fires across the state is not feasible.

Under the GED all duty holders have a responsibility to minimise their risks — this will include the operation of solid fuel heaters. EPA's website has information on the correct operation of solid fuel heaters. The guidance is currently being reviewed, with EPA identifying priority guidance to minimise risks and improve environment and health outcomes.

Local government has powers under the nuisance provisions of the *Public Health and Wellbeing Act 2008*. Under these provisions, any owner of a property or the person causing nuisance smoke must take all reasonable steps to eliminate the nuisance.¹⁹

The solid fuel heater testing methodology is set by the Joint Technical Committee CS-062, Solid Fuel Burning Appliances on behalf of the Council of Standards Australia and the Council of Standards New Zealand. The standards are reviewed and updated periodically. Suggestions to change standards can be made through the Stakeholder Engagement Manager at Standards Australia.

The Government is preparing a Victorian Air Quality Strategy to tackle air quality challenges, including the impacts of smoke from residential wood heating.

4.6.4 National Pollutant Inventory (National Environment Protection) Measures reporting requirements

Issue

Submissions from local government, industry and an environmental advocacy organisation commented on the requirement to report for the National Pollutant Inventory (National Environment Protection) Measures (NPI NEPM). While many supported the proposed approach some also noted that the current review of the NPI NEPM may result in the final Regulations requiring change in the near future.

Submissions stated the data collected should be used to establish a maximum baseline for each relevant metric, with the data reported through the system. Some also requested regulations to require the publication and public notice of any request for exemption to report on grounds of commercial-in-confidence information.

Submissions requested an exemption from reporting for the agriculture sector. They also sought further information on how rural and regional areas should measure their emissions for the NPI NEPM.

Response

No change was made in the proposed final Regulations as these provisions incorporate the requirements set out in the NPI NEPM. Deviating from NPI NEPM requirements would be inconsistent with the national approach and compromise the effectiveness of the NPI.

The proposed final Regulations set out who is required to report to the NPI — facilities exceeding the reporting thresholds in the NPI NEPM. Further guidance on which facilities and industries are required to report, how to estimate emissions and report is provided on the NPI website.²⁰

Review of NPI NEPM reporting obligations is conducted using a national process that considers financial impacts on businesses across Australia, including in Victoria. The current review is unlikely to finish until after the commencement of the final regulations. Changes to the regulations will be considered in the future if any legislative changes are made to the NPI NEPM.

The NPI NEPM provides a national framework that plays an important role as a community right-to-know and to track pollution across Australia, ensuring that community members have access to information that may affect them. However, the data reported through the NPI NEPM is not suitable for the purposes of setting limits on industries or at the site-level.

¹⁸ More information on the review can be found at <https://ref.epa.vic.gov.au/our-work/setting-standards/waste-management-policy-solid-fuel-heating-variation>

¹⁹ For more information see the EPA website at <https://ref.epa.vic.gov.au/your-environment/air/wood-burning-and-air-quality/what-to-do-about-neighbours-with-smoky-wood-heaters>

²⁰ Information can be found at <http://www.npi.gov.au/>

4.6.5 Vehicle emissions

Issue

Several submissions from community members, health professionals, industry and a local government raised various issues with the vehicle emissions regulations, including:

- whether standards that apply to petrol produced in Victoria should also be limited to petrol that is used in Victoria, noting that petrol produced in Victoria may be supplied to other states that may operate under different standards
- that anti-idling regulations be made to limit impact on air quality for pedestrians and locals
- exemption for passenger vehicles linked to agriculture businesses as they are mostly used in paddocks and on farms.

Response

The proposed final Regulations clarify the intent that vapour pressure standards apply to petrol supplied in Victoria, as opposed to refined in Victoria for supply to other states.

The proposed final Regulations do not introduce anti-idling regulations, or create Victoria-specific emission standards, as this would cause regulatory overlap with national standards. The proposed final Regulations focus on fuel quality and exhaust emissions, not on how vehicles are operated.

Emissions from vehicles will continue to be managed through Part 5.6 of the regulations, which reflect the *Environment Protection (Vehicle Emissions) Regulations 2013*. The standards and application of them have not been substantially changed and continue to apply to vehicles on a highway and do not cover vehicles on a farm or paddock.

4.6.6 Lack of specific regulation for some risks to human health and the environment

Issue

Submissions suggested it was unclear how to comply with the air requirements under the new EP Act or how some risks to human health and the environment from emissions to air would be managed.²¹ This was due to the perceived lack of regulation for these risks compared with the existing environment protection framework.

Submissions were made by the energy sector, industry and business associations, an environmental advocacy organisation and community members. Concerns raised included:

- lack of clear guidance on how to manage and monitor Class 3 substances, leading to uncertainty for business or potential mismanagement
- lack of clear exemption for release of visible emissions from safety relief flares, as set out in the *Protocol for Environmental Management: Minimum control requirements for stationary sources* (PEM).

Submissions also noted it was unclear how EPA will:

- set emission limits for stationary sources — and suggested that EU limits (from Industrial Emissions Directive 2010/75/EU) should form the basis of licence limits
- regulate emissions from commissioning, start-up and shut-down activities at power plants
- manage nuisance dust, including dry lake dust and other inland dust.

These issues arose due to uncertainty on how aspects of the PEM and SEPP (Air Quality Management) (SEPP AQM) were transitioned into the new environment protection framework.

Response

These risks to human health and the environment remain regulated through the new tools available under the new EP Act. These include the GED and EPA licences (which will set site-specific emission limits). These new tools will require emissions to be managed in accordance with best practice, which is consistent with the existing environment protection framework.

The proposed final Regulations provide equivalence to SEPP AQM in relation to the management of Class 3 substances by outlining the steps to manage the generation and emission of these substances to comply with the GED. Consistent with SEPP AQM, the requirements apply to all licensed businesses that handle Class 3 substances.

The PEM is not directly transferred into the new environment protection framework as the requirements for safety relief flaring will be determined through the state of knowledge and what is reasonably practicable in the context of the GED.

²¹ Housing Institute Association, JWA Oilfield Supplies, Australian Environment Business Network, Corangamite Shire, EJA, Energy Australia, Exxon, Anti-toxic waste alliance and 4 community members

4.7 Noise

Part 5.3 (Noise) of the draft regulations:

- included requirements related to predicting, measuring, assessing and analysing noise in accordance with the incorporated document *Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues* (Noise Protocol)
- prescribed unreasonable noise from residential premises, commercial, industrial and trade premises as well as entertainment venues and events
- prescribed aggravated noise from residential premises, commercial, industrial and trade premises and entertainment venues and events.

The Noise Protocol describes assessment processes, technical requirements, and noise limits. It replaces the schedules located in the SEPP (Control of Noise from Commerce, Industry and Trade) (SEPP N-1) and SEPP (Control of Noise from Public Premises) N-2 (SEPP N-2) and provides additional technical requirements to support assessments of noise.

Submissions were received on the draft noise regulations from community members, community groups, the music industry, environmental advocacy organisations, local government and government bodies as well as acoustic consultants. Submissions were mainly concerned with how the draft noise regulations were to be interpreted or implemented, understanding or confirming technical aspects of the noise limit measurement methodology outlined in the Noise Protocol, or querying the application of the compliance and enforcement approach.

This section responds to the following key concerns:

- construction noise
- unreasonable residential noise
- noise from commercial, industrial and trade premises
- noise sensitive areas
- noise from entertainment venues

agent of change

- aircraft noise
- Noise Protocol and technical noise measurements.

Submissions also commented on the Noise section of the draft ERS, see Chapter 5 for the Government's response to these.

4.7.1 Construction noise

Issue

Several submissions from community members and the construction industry sought clarity on how the draft regulations would address both residential and commercial construction noise, given that construction noise is not directly regulated under the noise framework.

Response

Construction noise is often emitted from diffuse and varied sources. The proposed final Regulations do not include specific noise limits for construction noise because, like other diffuse sources of pollution, this risk is best managed through the tools in the new EP Act.

Construction noise will be regulated through a risk-based application of the GED and the new unreasonable noise provisions in the new EP Act. This will be supported by EPA guidance on controls that a duty holder should consider implementing to eliminate or otherwise reduce the noise from construction activity.

4.7.2 Unreasonable residential noise

Issue

Several submissions from community members, local government, a government stakeholder and a consultant sought clarification about whether the new environment protection framework enables enforcement of unreasonable noise from any source at a residential premises. Some of these submissions proposed new sources to be explicitly included as sources of noise that are considered unreasonable.

Response

The definition of unreasonable noise in the new EP Act does not require specific noise sources to be prescribed for it to be considered unreasonable noise. The new environment protection framework can enforce unreasonable residential noise from any source at a residential premises. Therefore, no new sources of unreasonable residential noise have been included in the proposed final Regulations.

The new environment protection framework enables compliance to be enforced having regard to the definition of unreasonable noise under the new EP Act. This definition refers to factors such as volume, character, time and how often the noise is emitted. It also includes any prescribed factors or noise prescribed as unreasonable. The role of enforcement of the residential noise regulations sits with local government. EPA will produce guidance to assist assessment of unreasonable noise in a residential context.

4.7.3 Noise from commercial, industrial and trade premises

Issue

Several submissions from industry and an individual sought exclusion for some sources of noise from being assessed when determining if noise is unreasonable or aggravated. They were concerned they could not comply in emergency situations that require noisy equipment or infrastructure.

Response

The proposed final Regulations now include an exemption for 'equipment used in relation to an emergency' from being assessed when determining if noise is unreasonable or aggravated noise. The definition of emergency reflects the definition in the *Emergency Management Act 2013*.

The new EP Act defines unreasonable noise and aggravated noise irrespective of its source but enables regulations to set out factors to consider when determining if noise is unreasonable or aggravated. The draft and proposed final Regulations set out noise sources from commercial, industrial and trade premises that must not be considered when determining unreasonable noise or aggravated noise.

The change broadens the draft exemption for equipment used solely in an emergency context, to include all types of equipment when used in relation to an emergency. This includes, but is not limited to:

- occupational health and safety equipment
- equipment designed to deliver redundancy in the event of failure of critical systems such as safety valves
- equipment designed to prevent harm to human health or further damage to critical infrastructure
- medical-related equipment in hospitals (including back-up generators or boilers)
- other specialist equipment used in the operation of a hospital.

4.7.4 Noise sensitive areas

Issue

Several submissions from the music sector, local government and venue operators were concerned that the introduction of new noise sensitive areas in the draft regulations introduced compliance expectations for entertainment noise that were not practicable or proportionate to the risks to human health.

These include concerns about requirements:

- for venues to limit noise impacts on childcare centres, kindergartens, primary and secondary schools even when the entertainment venue and noise sensitive areas do not operate at the same time.
- to moderate noise around caravan parks, camping grounds and tourist establishments may prove challenging at rural festivals where these areas are used for accommodation for these events.

Response

The proposed final Regulations now better align the management of risks to human health in noise sensitive areas to the varying uses of those areas at different times.

The proposed final Regulations now apply the noise limits for the new noise sensitive areas of childcare centres, kindergartens, primary and secondary schools only during their normal hours of operation.

Where an outdoor entertainment event (including festival) or outdoor entertainment venue is operating in a rural area, relevant camping grounds, caravan parks and tourist establishments will not be considered as noise sensitive areas for the duration of that event. This will not apply to indoor entertainment venues — noise sensitive areas will still apply to such venues.

Robust controls remain for noise in these areas, through the GED and unreasonable noise provisions in the new EP Act.

4.7.5 Noise from entertainment venues

Issue

Music sector peak bodies, local government, industry, acoustic consultants and community members made submissions regarding Part 5.3 Division 4 of the draft regulations which related to the control of music noise from entertainment venues.

Submissions raised concerns that the proposed regulatory controls for indoor and outdoor entertainment venues and events (including music festivals of multiple day duration) did not meet current industry practice and community expectations. They felt this would result in increased regulatory burden and compliance costs and reduce the economic viability of the live music entertainment sector.

Several submissions challenged the requirement for permissions for outdoor entertainment venues or events, and provided information on the nature, scale and operating period of events, including smaller community events where music may not be the primary activity.

Submissions also indicated that, as many complaints are found by regulators not to be substantiated, the number of complaints received is not the appropriate measure to consider.

Response

The proposed final Regulations better accommodate a range of cultural events and clarify and broaden circumstances when a permission is not needed for an outdoor event. Permissions will only be required for events that operate for longer than eight hours, outside of prescribed hours, and where six or more concerts will be held at the same location within the financial year where noise levels will exceed 55 decibels. However, even where a permit is not required, noise limits in the proposed final Regulations still apply as does the GED and unreasonable noise provisions in the new EP Act.

To provide greater certainty the proposed final Regulations have been clarified to specify the way complaints must be considered when issuing permissions for events, making clear it is a 'history of complaints' rather than simply the number of complaints to be considered when assessing

applications.

4.7.6 Agent of change

Issue

Some submissions sought the introduction of a uniform approach where noise from all entertainment venues would be assessed using an indoor measurement from inside a relevant residential premises with doors and windows closed.

Response

The proposed final Regulations including the new agent of change provisions do not include uniform indoor measurement, in line with the approach set in the VPPs (including the new recently gazetted state planning policy Clause 13.07-3S (Live Music) and associated amendment to VPP Clause 56.03 (Live Music Entertainment Venues). The Regulations provide a flexible framework that can adapt to a council's decision to establish a music precinct where new dwellings can be specifically constructed to attenuate existing music noise, including providing any mechanical ventilation. Going beyond the approach set in the VPPs would create inconsistencies between key regulatory frameworks for noise and would have significant amenity impacts for residents.

4.7.7 Aircraft noise

Issue

Several submissions from community members, a community group and local government raised concerns about the impact on human health of noise from aircraft operating at Tyabb Airport near residential areas. This included the frequency of take-offs and landings, levels of noise during take-off, the duration of noise respite periods and operating periods. The submissions sought a night time curfew, limits to further expansion of operations or runways, bans on helicopters except in emergencies and no flights on Christmas Day or Good Friday except for emergencies.

Response

The Commonwealth Government generally regulates noise from in-service aircraft, including through the *Air Navigation (Aircraft Noise) Regulations 2018*. The Commonwealth is currently conducting a review to determine the appropriate scope and breadth of future noise regulation in relation to different types

²² More information on this review can be found at <https://www.infrastructure.gov.au/aviation/environmental/aircraft-noise/noise-regulation-review-for-rpa-drones-and-specialised-aircraft.aspx>

of aircraft including historic aircraft that operate at Tyabb Airport.²²

No change was made in the proposed final Regulations. Where aspects of aircraft noise fall within the remit of the EP framework, the GED, unreasonable noise and aggravated noise provisions of the new EP Act are considered suitable controls to manage noise from private airfields, where relevant.

4.7.8 Noise Protocol and technical noise measurements

Issue

Some submissions commented on a range of technical matters related to measurement of noise as set out in the Noise Protocol.

Response

In response to the submissions, the Noise Protocol has been changed to make technical corrections and provide clearer definitions and methods.

No substantive changes were made to the overall intent of the document. Guidance will be developed to support the implementation of the noise framework, including the Noise Protocol.

4.8 Water

Part 5.4 (Water) of the draft regulations included requirements related to disposal of wastewater from vessels. All other matters relating to managing the risks of harm to waterways are managed through the suite of new tools under the new EP Act including the GED and permissions. This is consistent with the existing framework, which relies on SEPP (Waters), the EP Act 1970 and a range of guidance.

Submissions on the draft water regulations were received from community members, environmental advocacy organisations and industry.

Many submissions sought greater prescription in the draft water regulations and the reinstatement of detail contained in the SEPP (Waters) (see Section 4.1 for an outline of concerns relating to the expiry and translation of the SEPPs). A significant number of submissions from community members raised concerns about the loss of provisions addressing discharges into areas of high conservation value.

Some industry submissions sought clarity on the extent of regulation on discharges from ships.

This section responds to the following key concerns:

- protecting areas of high conservation value
- clarifying regulation of discharges from ships.

Submissions also commented on the Water section of the draft ERS, see Chapter 5 for Government's response to these.

4.8.1 Protecting areas of high conservation value

Issue

Many submissions were received from community members and environmental advocacy organisations requesting a continuation of a provision limiting wastewater discharges into surface waters of high conservation value, currently in SEPP (Waters).

The SEPP (Waters) Clause 22(3) states EPA must not approve an application for an activity that would discharge wastewater to surface waters of high conservation value, unless EPA is satisfied that the wastewater discharge will be consistent with the requirements of SEPP (Waters) Clause 25. Clause 25 states EPA may approve an application to discharge wastewater to surface waters to provide water for the environment or other uses, if it is satisfied the wastewater can be treated and managed to a level to protect beneficial uses and the waterway manager (if applicable) is satisfied the discharge is consistent with environmental flow requirements.

Many of these submissions were concerned that omitting this provision would weaken the environment protection of Western Port Bay and other sensitive environments.

Response

Clauses 22(3) and 25 of SEPP (Waters) are not replicated in the proposed final Regulations, as tools under the new EP Act will provide equivalent protections for waters of high conservation value, both through duties placed on industry and other duty holders, and through the obligations placed on EPA.

The GED will require all Victorians to eliminate or minimise risks of harm to human health and the environment from pollution or waste, so far as reasonably practicable. The matters that must be considered in determining what is 'reasonably practicable' include the degree of harm that would result if risks eventuate and the 'state of knowledge' about the risks of harm. This essentially means a higher standard of care will be needed where an area is known to be a sensitive environment due to the degree of harm that may result if risks eventuate. This includes areas of high conservation value, such as areas recognised as wetlands of significance

under the Ramsar convention.

Where a proposed activity requires a licence or permit, the new EP Act requires EPA to refuse the permission application if it considers the activity poses an unacceptable risk of harm to human health or the environment. When assessing applications, EPA will be required to have regard to the principles of environment protection, which include the principle of the primacy of prevention and the precautionary principle. EPA will need to have regard to these principles when assessing applications for permissions in sensitive areas.

In addition to protections under the new EP Act, the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* also addresses the protection of Ramsar wetlands. Any activity that is likely to have a significant impact on the ecological character of a Ramsar wetland must be referred to the Commonwealth Minister for Environment and undergo an environmental assessment and approval process.

4.8.2 Clarifying regulation of discharges from ships

Issue

Two submissions from a community member and industry did not support the definition of 'wastewater' included in the draft regulations. Both submissions raised concerns that including 'cooling waters' and 'wash down' water in the definition of wastewater would place an unreasonable restriction on normal boating activities and would create unintended negative consequences.

These submissions also stated that the definition of

'aquatic pest' appeared broad and captured any species capable of fouling agriculture and infrastructure, even if they are local to the area and not harmful.

Response

The intention of this regulation is to prohibit the discharge of potentially harmful substances from vessels, not low-risk discharges from routine boating activities or activities which are separately regulated under the permissions regime. It is also not intended to treat local species as aquatic pests, rather to prevent the spread of invasive and damaging aquatic species not native to the area.

The proposed final Regulations now:

- allow the discharge of wash down waters and cooling water from normal boating activities, providing that risk is managed as far as reasonably practicable
- allow discharges of cooling waters from industrial processes if they are approved under a permission
- make it clear that native and local species are not considered aquatic pests and are not required to be captured.



5. Draft Environment Reference Standard – key issues and responses

This chapter responds to issues raised in submissions concerning the draft ERS. Issues have been categorised in the following themes:

- comparing the draft ERS to current legislation
- ERS standards and their interpretation
- how the ERS will be considered in decision-making.

The proposed final ERS sets out environment reference standards for Victoria’s air, land, noise and water environments. Before its release, Victoria’s Chief Environmental Scientist assessed the underpinnings of the draft ERS standards and made 15 recommendations concerning their future review. The Chief Environmental Scientist’s assessment was published in an Impact Assessment released alongside the draft ERS.²³

Many submissions commented or raised issues on the draft ERS or its supporting documents, mainly:

- comparing the draft ERS to existing subordinate instruments
- questioning the draft standards and their interpretation
- asking for more detail on how the ERS will be considered in decision-making.

This chapter summarises the issues raised in submissions and presents the Government’s response and any resulting changes.

5.1 Comparing the draft ERS to current legislation

Issue

Many submissions made comparisons between the draft ERS and the provisions in existing subordinate instruments, particularly the SEPPs. Submissions noted that most draft ERS standards were adopted from the SEPPs but highlighted the provisions of the SEPPs or WMPs that had not been translated directly into the draft ERS. Some expressed a view that the creation of ‘reference standards’ (rather than the compliance standards that appeared in some SEPPs) represented a drop in the level of protection offered to the environment.

Many submissions expressed concern about provisions of SEPP (Waters) that had not translated into the draft ERS, such as the provision for the consideration of surface water mixing zones and groundwater attenuation zones.

Several submissions expressed concern about aspects of existing air quality SEPPs that were not translated into the draft ERS including:

- SEPP (AQM) air quality design criteria for Class 1, 2 and 3 substances, which are used in the permissions process to assess the results of plume dispersion modelling for new and current emission sources.
- SEPP (AAQ) provision for air quality exceedances due to exceptional events.

Response

The Government has welcomed the high level of interest in and engagement with the draft ERS shown in public submissions.

The ERS is a new instrument that plays a new role in environmental decision-making. The ERS does not set direct compliance obligations. Within the new preventative framework, the ERS provides an environmental benchmark that helps to inform decision-making by describing desired environmental outcomes and providing contextual information about potential harms. The ERS also has other equally important uses, notably as a benchmark to assess and report on environmental conditions. While most ERS standards (including environmental values, indicators and objectives) were adopted from the SEPPs, they do not play the same role in protecting the environment as the standards, attainment programs, rules and obligations in the SEPPs.

Unlike the SEPPs, an ERS will not contain compliance requirements, regulatory prohibitions, rules and obligations for environmental managers, monitoring or reporting requirements, or any particular directions or considerations. The regulatory role played by those parts of the SEPPs will now be delivered by the new EP Act, the regulations and other tools under the new environment protection framework.

EPA will consider mixing zones, groundwater attenuation zones and air quality design criteria as part of the permissions assessment process. Further information on the regulatory approach to these matters may be provided through guidance, where appropriate.

The SEPP (AAQ) exceptional event provisions relate to the Government’s requirements to monitor, assess and report on air quality in accordance with the National Environment Protection (Ambient Air Quality) Measure (NEPM AAQ) — the Government will continue to report according to its NEPM commitments.

²³ The Impact Assessment, which includes the Chief Environmental Scientist’s assessment, is available at <https://engage.vic.gov.au/new-environmental-laws/subordinate-legislation>

5.2 ERS standards and their interpretation

Issue

More than 40 submissions made comments about the standards in the draft ERS. These included submissions that supported, or did not support, draft environmental values, indicators or objectives, or their application to the whole or part of Victoria. Submissions also advocated for the inclusion of additional or alternative standards, recommended changes to definitions, and requested clarification or recommended guidance to support the interpretation of the standards.

Response

The Government supports the standards in the proposed final ERS. It notes the processes followed to select and develop draft ERS environmental values, indicators and objectives were appropriate and comprehensive, and that ERS standards are underpinned by scientific evidence that is objective, peer-reviewed and based on national and international best practice.

The Government notes that the Chief Environmental Scientist identified some limitations with the standards and areas where the science is currently less certain. It also notes the 15 recommendations made by the Chief Environmental Scientist about a program of work for future review of the standards and associated guidance. Several comments made in public submissions align with the Chief Environmental Scientist's recommendations, including for:

- developing and including odour indicators and objectives
- considering indicators and objectives for the climate systems' environmental value
- including land contaminants and priority emerging contaminants for water
- developing interpretive and technical guidance.

Some changes have been made to the draft ERS in response to the issues raised in submissions —these are described below. Additional minor revisions were made to improve clarity and readability.

The ERS will be kept up to date and the standards further improved over time, consistent with new scientific evidence and knowledge. Issues raised in submissions will inform future reviews of the ERS, which will follow an appropriate, rigorous scientific

review process. EPA has begun preliminary work and committed to publish a plan for the review. It has also established a Technical Advisory Group to provide independent, technical and evidence-based advice on matters including:

- whether the indicators and objectives set out in the ERS are and continue to be appropriate
- options to revise and refine the indicators, objectives and their areas of application, based on the understanding of environmental conditions that characterise the environmental values
- identifying new environmental values and guiding options for indicators and objectives for those values.

Consistent with the Chief Environmental Scientist's Recommendation 1, EPA is developing guidance on the application of the ERS, including applicable measurement methods. This will include guidance on how ERS standards should or should not be interpreted, given the methods that were used to derive the objectives.

5.2.1 Ambient Air standards

Issue

Submissions expressed concern that the climate systems and odour standards would be open to subjective interpretation. Submissions mostly commented that the climate systems environmental value should be more clearly defined by adding indicators and measurable objectives. Similarly, submissions generally recommended replacing the qualitative odour objective with a quantitative measure, or providing supporting guidance, or removing the indicator altogether. Other comments included that the ERS should adopt the World Health Organisation guidelines for outdoor air pollution, and that Victoria should consider adopting standards for particulate matter PM1 if demonstrated that these particles have the potential to cause harm.

Several submissions queried the Government's intention to revise the ERS standards for sulfur dioxide, nitrogen dioxide and ozone once the current review of the NEPM AAQ has been completed. While there was support for this approach, some submissions recommended that Victoria adopt stricter standards than the revised NEPM standards in any update to the ERS. One submission cautioned that any changes to the ERS following the NEPM update need to be carefully considered to ensure that their application is consistent with their intent.

Response

Development of indicators and objectives for the climate systems' environmental value will be considered as part of a future review of the standards, noting that any such inclusion must be consistent with the Government's approach to regulation of GHG emissions through government policy, rather than direct regulation (see Section 4.6.1). Indicators and objectives for odour will also be considered as part of a future review.

EPA is developing odour assessment guidance to support the GED, permissions and other odour assessments. It will set the criteria at which odour may be offensive, and clarify harms and will assist with interpretation of the ERS odour objective.

The National Environment Protection Council is expected to vary the NEPM AAQ to update national standards for sulfur dioxide, nitrogen dioxide and ozone in late-2020. Following this the Government will consider adopting revised standards into the ERS, noting that the new EP Act allows for more stringent standards than the NEPM, in consultation with the National Environment Protection Council.

5.2.2 Land standards

Issue

Submissions commented on a mix of issues.

Two submissions commented that the land standards should include an environmental value for Traditional Owner cultural values, to match the Traditional Owner environmental value for water.

Environmental auditors commented that the draft ERS should include provision for considering the impacts on human health from soil vapour and ground gases, by including human health objectives for vapour intrusion in either the land or groundwater standards.

Environmental auditors sought clarification about the site-specific characteristics that would result in an objective that is different to the applicable level specified in the NEPM ASC for the maintenance of ecosystems and human health environmental values. They asked how background levels will be applied in these circumstances.

More generally, submissions:

- queried whether the technical aspects of SEPP (Prevention and Management of Contamination of Land) adopted in the draft ERS would be reviewed and revised in the near future.
- requested guidance on the aesthetics environmental value, and the management of acid sulfate soils
- suggested the proposed final ERS could include reference to litter.

Response

To reinforce the importance of Traditional Owner cultural values, consistent with Victorian law, specific recognition of Traditional Owners has been added in the proposed final ERS preamble. The proposed final ERS preamble states:

'All places in Victoria exist on the traditional country of Aboriginal Victorians. As recognised in the Constitution Act 1975, Aboriginal people have a unique status as the descendants of Australia's first peoples and a spiritual, social, cultural and economic relationship with their traditional lands and waters within Victoria. Where relevant, this ERS should be considered and understood in this context.'

The Government will consult with Traditional Owner groups and other stakeholders to develop an appropriate environmental value, indicators and objectives in a future update of the ERS.

Reference to the impacts of soil vapour and ground gases will be considered as part of a future review of the standards.

While not intended to support ERS interpretation, the proposed final Regulations include a new waste code for WASS and EPA will make a determination to enable receipt of WASS, that will set clear specifications and conditions for its receipt (see Section 4.5.9). EPA also plans to develop guidance to highlight the current state of knowledge for best practice management of acid sulfate soils.

EPA will clarify how site-specific characteristics will inform alternative objectives for the maintenance of ecosystems and human health environmental values.

At this stage, no guidance is planned for the interpretation of the aesthetics (land) environmental value.

5.2.3 Noise / Ambient sound standards

Issue

Multiple submissions from the music industry observed that SEPP N-2 includes a policy goal of protecting residents from noise while recognising the community demand for a wide range of musical entertainment. They commented that this recognition is not translated into the new framework and expressed concern that this could be interpreted and applied to the detriment of Victoria's live music industry. Submissions recommended adding an environmental value to the draft ERS that reflected the importance of enjoyment of musical and cultural sound.

Submissions from music industry groups, energy, major infrastructure, waste and recycling industries, and acoustic and environmental health consulting groups commented, raised concerns or sought guidance about how the noise standards will be interpreted and applied. This included the interpretation of the additional environmental values for child development and learning and human tranquillity and enjoyment outdoors in natural areas, and the application of the land use categories.

Many submissions did not support or were concerned about the draft noise objectives — in particular, while many submissions noted that ERS standards are not compliance standards, there was broad concern that the objectives could be misapplied and become de facto noise limits. There were many calls for overall guidance or clarification of the intended application of the standards, including defining their functions more clearly and clarifying their interactions with the noise provisions of the draft regulations, the Noise Protocol and other noise-related policies.

Response

To continue recognising community demand for a wide range of musical entertainment, as reflected in SEPP N-2, an additional environmental value — ‘Musical entertainment’ — has been added to the proposed final ERS. It is described in Part 3 Table 1 of the proposed final ERS as ‘an ambient sound environment that recognises the community’s demand for a wide range of musical entertainment.’

The noise part of the proposed final ERS has been renamed ‘ambient sound’ to more accurately reflect the element of the environment that is being addressed. Revisions have also been made to clarify that decision makers should not consider the ambient sound standards to be enforceable noise limits — the standards are not replacements for existing noise management compliance obligations, nor noise limits set through the Noise Protocol.

General guidance is being prepared about the operation of the new noise framework, including the noise regulations and Noise Protocol. The guidance will clarify how the ERS ambient sound standards relate to the framework.

5.2.4 Water standards

Issue

Issues raised in submissions included:

- An industry association noted that the definition of an aquifer would mean that environmental values would apply to water in landfill cells.
- Requests that water segment boundaries be more clearly defined, including that EPA produce an interactive digital spatial map, and an energy company commented that the La Trobe Valley be demarcated as a separate segment.
- An energy company raised concern about the implications for risk assessment, monitoring and reporting requirements due to the inclusion of the environmental value for geothermal properties.
- A transport infrastructure body sought clarification about requirements for sampling and analysis related to the environmental value for water dependent ecosystems and species (subterranean).
- A water corporation noted that the draft ERS does not address emerging contaminants.
- An environmental group commented that the draft ERS does not clearly address water sediments.
- Submissions also raised matters relating to the interpretation of the ERS, seeking clarity on:
 - when an environmental value may not apply to an aquifer due to insufficient yield
 - an environmental value not necessarily being adversely-impacted where an objective is not achieved — rather, that further risk assessment is required
 - interpretation of references to the water-based recreation classification matrix for long-term microbial indicators and objectives (proposed final ERS Table 19).

Response

The proposed final ERS clarifies that environmental values do not apply to waters, or leachate in constructed landfill cells.

The boundaries of one surface water subsegment (Hobsons Bay) have been clarified and an open data digital spatial layer that clearly defines segment boundaries produced. The spatial layer is available on the DataVic website.²⁴ A note has been added to proposed final ERS clause 17 'Segments' which refers to the spatial layer and links to the website.

The environmental value 'water dependent ecosystems and species (subterranean)' has been renamed as 'water dependent ecosystems and species (in subterranean waters with a hydrogeological setting conducive to the presence of troglofauna and stygofauna).' The change aligns the environmental value more closely to that in SEPP (Waters).

A marine pollutant load objective for Total Suspended Solids (TSS) for Western Port East Arm subsegment has been removed (from Table 21) because it conflicted with a more stringent TSS objective for East Arm subsegment in Table 14. The more stringent TSS objective for East Arm subsegment will apply instead. This is consistent with the purpose of ERS objectives, which describe desired environmental outcomes, rather than setting (lower) interim compliance or management requirements.

Emerging contaminants and other potential standards will be considered as part of a future review.

Consistent with the Chief Environmental Scientist's Recommendation 14, EPA will consider developing short- and long-term site-specific water quality objectives for microbial contamination. Guidance for interpreting microbial indicators and objectives will also be developed as part of this work program. It will also address risk assessment methods for water environments to assess whether an environmental value is adversely affected where an objective is not achieved.

EPA does not plan to develop specific guidance on the geothermal properties environmental value for groundwater. Including the value in the ERS does not create obligations for risk assessment, monitoring and reporting — any such requirements are considered as part of the permissions assessment process.

At this stage, no guidance is planned on specific conditions where environmental values may not apply to an aquifer due to insufficient yield.

5.3 How the ERS will be considered in decision making

Issue

Many submissions requested guidance about how the ERS should be taken into account in decision making.

One industry submission noted the requirement for EPA to consider the impact of a proposed activity on ERS environmental values when assessing applications for development, operating or pilot project licences. It commented that the absence of further guidance about how the ERS should be considered, and about how much weight it should be given, could be a source of litigation and industry uncertainty.

Several submissions commented on the provision that the Responsible Authority under the *Planning and Environment Act 1987* may consider an ERS when considering an application for a planning permit. Submissions recommended clarification or the provision of guidance for Government about how the ERS — in particular the noise standards — should be considered in those circumstances.

Closely related to the potential consideration of an ERS in the consideration of planning permit applications, several submissions queried how the ERS would be integrated into the Victorian planning system. Submissions recommended consideration be given to how to incorporate appropriate references to the ERS in the VPPs and asked how the ERS will be integrated into local government strategic planning.

Response

EPA will provide general information on the role of the ERS in decision making. This will include outlining its role within the framework and describing the general principles that should guide its use when making environment protection decisions. Where appropriate, further information will also be provided to clarify its application to particular decisions. For example, revised environmental auditor guidelines will describe how the ERS relates to auditor functions.

Updates are being prepared for planning system instruments to ensure they are aligned with the environment protection framework, which will include referencing the ERS where appropriate. Further information will be published to guide general consideration of the ERS in the planning system.

²⁴ The spatial layer is available at <https://www.data.vic.gov.au/>



6. EPA's implementation of the new framework

This chapter responds to issues raised in submissions concerning the implementation of the new environment protection framework. Issues have been categorised in the following five themes:

- EPA engagement and support
- requests for guidance
- working with co-regulators
- implementing the permissions framework
- EPA's approach to compliance and enforcement.

6.1 EPA engagement and support

Issue

Many submissions requested that EPA plays an active role in engaging with industry and other duty holders to support them to understand their risks and comply with the new framework. This included requests for support to prepare for the new framework and for ongoing assistance to support compliance. Submissions also emphasised the importance of ongoing consultation to ensure that the framework operates effectively and that supporting tools are practical and helpful.

Many submissions drew attention to the complexity of the draft regulations and the investments required to understand the new framework and to implement a prevention-based approach. Some peak body and industry submissions suggested that the period to analyse and understand the subordinate legislation was too short. Reflecting this, many submissions argued that it was important that EPA focuses on supporting duty holders to comply, rather than taking a firm enforcement approach — especially during the transitional period.

Equally, submissions from industry — notably in the waste and resource recovery sector — and community members emphasised the importance of engagement and consultation on matters that affect them. Several emphasised the need for EPA to consult prior to making decisions on supporting instruments such as determinations and compliance codes, or when developing guidance that may have financial or resourcing implications for local government. Community members emphasised the need for community involvement in decision making processes.

Some submissions requested that EPA undertakes public education campaigns and targeted awareness raising activities. This included local government requesting education campaigns to

ensure landowners are aware of their duty to minimise risks of harm from OWMS, to raise awareness about the plastic bag ban and on the issue of litter. Comments also suggested that EPA makes efforts to ensure that businesses that are newly required to obtain a permission are aware of their requirements.

One submission argued for improvements to how the public can contact EPA and access support to resolve specific environmental problems.

Response

Establishing and implementing the new environment protection framework will take time. The Government is committed to helping stakeholders to understand and comply with the new environment protection framework. Informing, educating and providing support to comply are critical parts of EPA's regulatory role.

As described in EPA's draft Regulatory Strategy 2020-2025, EPA's regulatory activity will aim to raise awareness of:

- environmental duties of care
- risks of harm to human health and the environment from particular activities
- knowledge of environmental quality
- understanding of EPA's role and jurisdiction.

EPA will also provide advice and guidance, and build partnerships to ensure duty holders know what compliance is, and to improve their capability to identify and manage their risks.

EPA's strategic focus areas will be delivered across three main 'delivery horizons' over the next five years. In Horizon 1 (2020-2022) EPA will work to support duty holders' transition to the new framework, while maintaining a strong focus on existing priority harms, and those that deliberately non-comply, or create risks of harm. Where duty holders do not demonstrate willingness to comply, the Government expects EPA to take swift, decisive and effective regulatory action to protect the community from harm.

EPA will provide education and assistance through a range of engagement and support activities and approaches, including:

- new industry and sector reference groups
- industry partnership program
- small business program pilot
- local government.

In 2019 EPA established five new IRGs, including industry associations, peak bodies and duty holders. These groups will support implementation of the new environment protection framework and work with EPA to identify opportunities to partner in the development and delivery of education and support programs.

EPA is continuing to collaborate with industry associations to provide resources and materials that can be used by those associations to deliver training to members and peers within their industry. The materials EPA provides will enable industry associations to deliver training and help their stakeholders understand what the new environment protection framework means for them.

EPA, in collaboration with industry associations, has commenced a pilot program to offer free expert advice to support small businesses to understand how to identify and manage environmental risks. Learnings from this pilot program will support EPA to adapt its approach to education and support to best suit the needs of small businesses.

EPA and MAV are developing a Memorandum of Understanding (MoU) to support the co-regulatory roles of EPA and local government. The MoU will outline roles and responsibilities for EPA, MAV and local government (see Section 6.3). EPA's ongoing engagement with local government and MAV will also support local government to implement the reforms.

EPA is also updating its website and will progressively increase the channels available to the community to interact with EPA. For example, pollution reporting will be available on EPA's website in addition to phone reporting. All website content will be mobile friendly as research shows most stakeholders use mobile technology to access EPA's website.

Finally, EPA will continue to create appropriate opportunities for stakeholders to participate in decision making. EPA's commitment to consultation with Victorians is set out in its draft Charter of Consultation. EPA will apply the charter in accordance with the legislative principles of environment protection — in particular the principle of accountability — which includes a requirement that members of the public be engaged and given opportunities to participate in decisions made under the new EP Act, where appropriate.

6.2 Requests for guidance

Issue

Submissions expressed a powerful desire for more guidance and clarity about how the new environment protection framework will be implemented. More than a quarter of all issues in submissions expressed a need for guidance — the single most frequent issue across all submissions.

Duties relating to contaminated land attracted a significant number of requests for guidance from stakeholders including industry, peak bodies in energy, construction and water sectors, and environmental consultants and auditors. Guidance was sought on:

- extent of investigation, testing, analysis and management necessary to comply with the duty to notify
- obligations regarding on-site and offsite contamination
- how to interpret regulatory terminology where judgement was required, such as the concentration that is 'likely to remain' above specified concentrations and a person that is 'likely to be exposed' to the contaminant
- requirements in areas of regionally-elevated contaminant concentrations
- impact on the environmental audit framework and role and functions of EPA-appointed environmental auditors.

There were many calls for guidance from industry and industry associations on the requirements of the new waste framework, including:

- operation and contents of the new DoU
- assessment and testing requirements for classification of waste for disposal and reuse
- clarity about the implications of background contaminants
- requirements for recording and tracking of reportable priority waste
- requirements for accredited consignors
- extent of an organisation's obligation under the GED to ensure consignors, contractors and other third parties were meeting waste tracking requirements
- containment options for Category D soils
- rates of waste levy and levy rebate
- reporting requirements for trade waste discharged to sewer.

There was also considerable interest in the operation of the new noise framework. Diverse stakeholders — including community members, government, councils, acoustic consultants and corporations — sought general guidance about how the noise components of the new EP Act, draft regulations, incorporated documents and ERS worked together. Submissions expressed a need for specific guidance on:

- the application of ERS noise indicators and objectives
- differences in requirements for residential noise, construction noise, noise from commercial, industrial and trade premises, and from entertainment venues
- the interpretation and application of unreasonable and aggravated noise provisions, including the respective co-regulatory roles of EPA, local government and police in undertaking compliance and enforcement
- the process to secure exemptions from regulatory requirements
- management of noise from specific sources, such as airfields and racetracks
- further technical guidance on aspects of the Noise Protocol, such as noise measurement methods.

In addition to calls for guidance in specific areas, there were many requests for general guidance on how to comply with the new preventative framework, particularly the GED.

Response

The development of guidance to support the new environment protection framework and duty holders, is a key priority for EPA and DELWP across the next year.

The Government's commitment to ensuring that duty holders are supported to understand and comply with the new framework is reflected in EPA's draft Regulatory Strategy 2020-2025, which states that: 'EPA will be clear about what the law requires and will support duty holders to achieve compliance by providing advice and guidance on how they can be met.'²⁵

Since 2017 EPA has dedicated significant resources and worked in consultation with industry to produce prevention-focused industry guidance that support duty holders to comply. EPA has already published a range of general interpretive guidance materials to support businesses²⁶, including guidance about assessing and controlling risk, environmental risk management, determining what is reasonably practicable, supporting compliance with the GED, including understanding the importance the state of knowledge. EPA will continue to develop guidance to support duty holders to understand and minimise risks of harm.

EPA has developed a small business self-assessment tool to support small business to identify whether their activities may cause harm to human health and the environment, and actions they can take adequately manage their risks.²⁷ It has also developed a number of industry-specific sector guides that bring together essential information on common hazards in their industry and how to identify and manage their risks. Sector guides for the construction, manufacturing, waste and recycling, agriculture, mining/quarrying, retail and local government sectors have been published. The guides connect businesses to other relevant industry guidance that may provide more specific and in-depth information about controlling specific risks.

²⁵ EPA's draft Regulatory Strategy 2020-2025 can be viewed at <https://www.epa.vic.gov.au/about-epa/publications/1800-1>

²⁶ EPA guidance materials can be viewed at <https://www.epa.vic.gov.au/about-epa/publications> under the relevant publication number (PN) on: assessing and controlling risk (PN 1695-1); environmental risk management (PN 1741); reasonably practicable (PN 1856); compliance with the GED (PN 1741); construction (PN 1820); manufacturing (PN 1822); waste and recycling (PN 1825); agriculture (PN 1819); mining and quarries (PN 1823); retail (PN 1824) and local government (PN 1821).

²⁷ To view the small business self-assessment tool go to <https://www.epa.vic.gov.au/for-business/find-a-topic/small-business-self-assessment-tool>

EPA has also published, or is developing subsector prevention-focused guidance for numerous business activities — for example about construction waste,²⁸ auto parts recycling,²⁹ and agriculture³⁰ — and a range of hazard-based guidance to support compliance in relation to specific hazards faced by many businesses and community members — for example liquid storage and handling³¹ and noise.³²

EPA will continue to deliver a major work program to produce guidance that will clarify other legislative and regulatory requirements, including guidance on:

- duties under the contaminated land framework
- the new waste framework, including:
 - further information on waste classifications and testing requirements
 - requirements to meet obligations under the new EP Act to deposit waste at a lawful place
 - process and requirements for tracking of reportable priority waste
 - explanation of the new DoU tool
 - application of waste disposal categories
- the operation of the new noise framework, including technical guidance to support the Noise Protocol
- processes and requirements for permissions.

6.3 Working with co-regulators

Issue

Many submissions focused on the roles and responsibilities of co-regulators in the implementation of the new framework, including the delineation of roles and coordination between co-regulators and EPA.

Significant issues were raised about the co-regulatory role of local government under the new EP Act, including:

- OWMS — submissions sought clarity on delegation of enforcement powers, guidance on local government's role, emphasising the importance of their involvement preparing guidance materials.
- Noise — submissions called for clarity on the overlapping roles and responsibilities of EPA, local government and Victoria Police, including:
 - protocols for referring noise issues and complaints
 - delegation of enforcement powers for residential construction noise
 - more flexible and easy-to-use enforcement tools for local government officers.
- Litter and waste dumping — submissions sought clarity on the division of enforcement responsibilities between EPA and local government and requested that EPA update its litter enforcement toolkit for local government and share intelligence.
- Plastic bag ban — submissions sought clarity on which regulator would lead compliance and enforcement of the plastic bag ban.

Several submissions called for EPA to enter into an MoU with local government to set out roles and responsibilities, set ongoing governance and engagement arrangements, and provide a framework for delivering the delegation of powers to local government.

Submissions from peak bodies also commented on the importance of coordination between EPA and other regulators, to avoid duplication and streamline compliance and enforcement activities, including with Earth Resources Regulation, Worksafe and Energy Safe Victoria.

²⁸ For construction industry guidance visit <https://www.epa.vic.gov.au/for-business/find-a-topic/construction-industry-guidance>

²⁹ For guidance about auto recycling visit <https://www.epa.vic.gov.au/for-business/find-a-topic/auto-recycling-guidance>

³⁰ For guidance about agriculture visit <https://ref.epa.vic.gov.au/business-and-industry/guidelines/agricultural-guidance>

³¹ For guidance about how to store and manage liquids visit <https://www.epa.vic.gov.au/for-business/find-a-topic/store-manage-liquids>

³² For guidance about noise visit <https://www.epa.vic.gov.au/for-business/find-a-topic/noise-guidance-for-businesses>

Response

Cooperation among regulators is a key element of good practice set out in the Victorian Government Statement of Expectation Framework for Regulators as part of the Government's policy to improve regulator performance.³³

EPA will work closely with its co-regulators to support the exercising of delegated powers and shared responsibilities. EPA will review its MoU with Earth Resources Regulation and EPA's regional offices will also play a critical role in working directly with local government and co-regulators to provide support and build awareness.

EPA is developing an MoU with MAV and it will update guidance for local government by commencement of the EP Act, based on its current litter enforcement toolkit. This includes toolkits for litter and waste enforcement, residential noise and enhanced guidance on OWMS and local government delegations.

6.4 Implementing the permissions framework

Issue

In addition to some calls to change the draft regulations (see Section 4.3), submissions from industry, industry associations and local government showed a high level of interest in the implementation of the permissions framework. Submissions sought more information or raised concerns on:

- the process for transitioning to the new framework, including calls for consistency for major projects already underway
- clarity on how EPA will approach its power under the new EP Act to modify existing permissions within 12 months of the new EP Act's commencement, including the need to avoid material or retrospective changes
- processes and triggers for application, assessment, exemption, review and renewal of permissions
- scope of activities under permission categories or within a single permission
- existing permission conditions that have not been explicitly carried through to the new framework
- the operation and assessment of pilot project licences

- information required to support licences
- permissions assessment time periods, including:
 - requests for more information about the use of 'stop the clock' provisions where further information is required to assess an application
 - comments emphasising the importance of triaging assessments so that low-risk assessments are processed without undue delay
- clarity on when financial assurances will be required and how they will be calculated
- clarity on reporting requirements for each permission tier
- a range of minor matters such as clarifying terminology and process, for example, use of the term 'family members' and consideration of consent.

Some submissions recommended changes to the draft regulations that are better addressed through permission conditions, guidance or administrative processes, such as the request to retain clauses in SEPP (Waters) that permit discharge of wastewater to surface waters or groundwater through mixing zones and attenuation zones.

Submissions recommended that EPA maintain a public register of permission holders and permissioned activities, with a focus on promoting transparency and accountability within the waste and resource recovery industry. An environmental organisation advocated that the manner, form and amount of financial assurances included as permission conditions should also be included in the register.

Response

The Government recognises stakeholders' interest in clarifying arrangements for transitioning existing permissions into the new framework and is working to facilitate a smooth transition process, including the development of proposed changed permission conditions, where appropriate. There is no need to re-apply for existing licences as these will be transitioned to the new framework under the equivalent new permissions.

EPA will actively engage with industry on the transition approach and any proposed permission changes. During the first 12 months of operation of the new framework, EPA may develop new conditions, or change or remove existing conditions to reflect the new framework, and integrate them in

³³ The Victorian Government Statement of Expectation Framework for Regulators can be viewed at <https://www.dtf.vic.gov.au/reducing-regulatory-burden/statement-expectations-regulators>

existing permissions. EPA has consulted permission holders on newly drafted conditions and will engage further on these transitional matters, with a focus on operating licences. The new EP Act requires that EPA gives at least 10 days' notice before using the transitional power.

In December 2019 EPA published its *Permissions Scheme draft policy*, which sets the context for permissions in the new framework and the roles of the permission tiers. The draft policy outlines high-level factors EPA will consider in assessing permissions and highlights interactions between the permissions scheme and the regulatory framework for waste management.³⁴

Delivering further clarity to stakeholders about permissions processes is a matter of high priority. EPA is developing guidance material to support aspects such as the administration of applications, information requirements for assessments, and processes for renewal.

EPA is working to ensure a clear and consistent approach to the use of permission conditions. A range of issues raised in submissions will be addressed through permission conditions. EPA considers that there can still be provision for mixing zones or groundwater attenuation zones in assessments and conditions. Permission reporting requirements will also be established through conditions and supporting guidance.

It is a requirement of the new EP Act that EPA establishes and maintains a public register that includes details of permission holders and permissioned activities.

6.4.1 Transitional arrangements for major projects with approved environment protection management frameworks

Issue

Submissions from industry sought clarity on the approach to transitioning compliance requirements for environment protection for current major infrastructure projects.

Major projects are subject to extensive environmental assessment processes under State and Commonwealth legislation, including comprehensive community consultation. Industry sought assurance that existing approvals and environmental management frameworks issued through these processes would continue to be valid throughout the transition.

Response

The Government acknowledges the particular circumstances of major infrastructure projects that are already subject to conditions established through rigorous and transparent environmental assessment processes, for example, environmental effect statement processes, and recognises the importance of ensuring a smooth transition for major projects already underway. EPA and DELWP continue to work closely with industry and government stakeholders to determine the best mechanism to deliver stability and certainty for major projects across the transitional period and provide robust protection for the environment and human health.

6.5 EPA's approach to compliance and enforcement

Issue

Submissions showed considerable interest in EPA's compliance and enforcement approach.

Many submissions made general statements about EPA's capability to undertake compliance and enforcement — for example, community members and community groups expressed concern about EPA's ability to enforce the new framework and hold polluters to account. A number of submissions commented on the expertise of EPA staff to provide support to industry and to undertake compliance and enforcement action. Submissions commented that to support compliance, EPA staff need to be trained and experienced, and need to have strong knowledge of the new framework, including knowledge of risk assessment and management. Submissions also commented that, to be effective, EPA's compliance and enforcement program needs to be properly resourced.

Several submissions from industry and industry associations commented on the process for transitioning to the new framework. As noted earlier in the chapter, several submissions recommended that during the transitional period EPA should put greater emphasis on education and supporting duty holders to comply, rather than adopting an enforcement-focused posture from the outset. Other submissions sought further information on specific transitional issues, such as whether notices currently in force will be revised and reissued to align with the new framework.

³⁴ EPA's Permissions Scheme draft policy can be viewed at <https://www.epa.vic.gov.au/about-epa/publications/1799-1>

Submissions from local government and industry touched on the principles underpinning EPA's compliance and enforcement approach. This included emphasising the importance of:

- fairness
- communicating and applying enforcement measures clearly and consistently
- taking into consideration capacity constraints and regional disadvantage as part of any compliance or enforcement action pursued.

Some submissions also advocated for information about noncompliance and enforcement taken against duty holders to be published on EPA's website.

Response

The new EP Act increases EPA's investigation, surveillance, compliance and enforcement powers and introduces a range of strengthened fit-for-purpose sanctions, remedies and compliance tools.³⁵ It sets firm new compliance benchmarks through a range of new duties and obligations.

Reflecting its strengthened role and powers, EPA is building its internal capability and developing a sophisticated approach to compliance and enforcement, set out in its *Compliance and Enforcement Draft Policy*, released in December 2019.³⁶ The draft policy sets out EPA's approaches for both supporting and directing compliance, and its principles and criteria for decision-making, including the consideration of risk, and behaviour and motivations for compliance. The draft policy describes how EPA will use a mix of encouragement and deterrence to motivate action, and will respond to noncompliance in a way that is both proportionate to the seriousness of the problem and focused on achieving the desired regulatory outcome.

However, EPA recognises that transition to the new framework will take time for duty holders. As outlined in the draft Regulatory Strategy 2020–2025, across the transition to the new framework, EPA will be focused on support and education, while continuing to address the biggest risks of harm and targeting deliberate noncompliance.

Under the transitional provisions of the new EP Act, notices issued under the EP Act 1970 remain in force for two years after commencement of the new EP Act. EPA is considering an approach to transitioning notices issued under the EP Act 1970, especially those notices that will need to be in place for more than two years after commencement.

EPA is committed to ensuring that its staff have the capability and expertise to provide risk-based advice and perform effective compliance and enforcement functions under the new EP Act. The number of appointed Environment Protection Officers has significantly expanded. EPA is developing policy, procedures, digital systems and training to ensure officers can confidently perform their functions under the new legislation. Better equipped and better trained officers will increase capacity for inspections and maximise the information available in the field to support targeted and effective compliance and enforcement.

EPA will publish information about noncompliance by permission holders on its website. This will include information about suspension and revocation of licences and the result of court proceedings (including prosecutions and civil penalty cases).

EPA will also publish a range of guidance to clarify its expectations and posture on a range of compliance and enforcement issues, including:

- how EPA will apply its discretion regarding its enforcement response (Sanctions Powers Policy)
- how EPA will use its remedial powers (Remedial Powers Policy)
- how Authorised Officers will use the powers of inspection and inquiry (Inspection and Inquiry Powers Guide)
- how EPA will perform statutory internal reviews of remedial notices (Internal Review Policy)
- how EPA will monitor and enforce the permissions framework (Permissions Scheme Policy)
- how EPA will respond to duty holder notification of contaminated land
- guidance on the purpose and functions of Site Management Orders.

³⁵ The new EP Act provides EPA officers with a suite of adaptable tools to secure compliance. This includes notices to deal with risks to human health and the environment (improvement and prohibition notices) and notices to remediate contamination, waste and pollution (notices to investigate and environmental action notices). EPA can also impose long-term management measures through a site management order. The new EP Act also allows EPA, in certain circumstances, to redirect liability to comply with environmental action notices and site management orders. EPA officers' powers of entry, inspection and inquiry have been enhanced and EPA will be able to use the full extent of the Surveillance Devices Act 1999, which will enable EPA to deal with waste crimes and other serious offences. The new EP Act also increases maximum penalties for offences, allows EPA to seek civil, as well as criminal penalties, and makes a range of orders available to the court to prevent harm, restore the environment or penalise an offence.

³⁶ EPA's Compliance and Enforcement Draft Policy can be viewed at <https://www.epa.vic.gov.au/about-epa/publications/1798-1>



7. Appendices

7.1 Appendix A — List of submissions received

Confidential submissions (167)

Non-confidential submissions by community members (80)

- Asthma Australia
- Aurecon
- Australian Air Quality Group
- Australian Contaminated Land Consultants Association Victoria (ACLCA)
- Australian Environmental Auditors
- Australian Festival Association Inc.
- Australian Industry Group on behalf of Waste Industry Alliance Victoria
- Australian Packaging Covenant Organisation (APCO)
- Australian Parents for Climate Action
- Australian Pork Limited
- Australian Venues Association
- Campaspe Shire Council
- Cement Concrete & Aggregates Australia
- Chemistry Australia
- City of Greater Bendigo
- City of Greater Geelong
- City of Whittlesea
- Civil Contractors Federation Victoria
- Construction Material Processors Association Inc. (CMPA)
- Dairy Australia and Dairy Manufacturers Sustainability Council
- Darebin City Council
- Doctors for the Environment
- Drycleaning Institute of Australia
- East Gippsland Shire Council
- Ecovantage
- Energy Pty Ltd
- Environment Victoria
- Environmental Justice Australia
- ExxonMobil Australia
- Faculty of Asbestos Management of Australia and New Zealand (FAMANZ)
- GHD
- Golder Associates (2)
- Goulburn Valley Waste & Resource Recovery Group (WRRG)
- Housing Industry Australia
- JWA Oilfield Supplies (Composite Matting Division)
- Live Music Office
- Manningham Council
- Maroondah City Council
- Minerals Council of Australia Victoria Division
- Mitchell Shire Council
- Moira Shire Council
- Moreland City Council
- Mount Alexander Shire Council
- Moyne Shire Council
- Municipal Association of Victoria (MAV)
- Music Victoria Surf Coast Shire
- National Wind Farm Commissioner
- Nillumbik Shire Council
- OPEC Systems
- Paintback
- Philip Island Conservation Society
- Port Phillip EcoCentre
- Protect Park Street Precinct Pty Ltd
- Salient GeoEnvironmental Consulting Pty Ltd (2)
- South Gippsland Shire Council
- Urban Development Institute of Australia
- Veolia
- Victorian Automobile Chamber of Commerce
- Victorian Waste Management Association (VWMA)
- VicWater
- Voices of the Valley
- Waste Management and Resource Recovery Association of Australia
- WDMS Pty Ltd
- Westernport and Peninsula Protection Council Inc
- Yarra Valley Water

7.2 Appendix B — Stakeholder reference group membership

7.2.1 Stakeholder working groups

Five stakeholder working groups (SWG), informed development of the proposed final Regulations and ERS, one each for air, water, noise, contaminated land, waste and permissions. The permission regulations SWG was combined with waste to form a single SWG. The members of each group are listed below.

Table 3: List of SWGs and their members

Stakeholder working group	Members
Air	<ul style="list-style-type: none"> AGL Energy Asthma Australia Australian Paper Bluescope Steel Brimbank City Council Caltex Cement Concrete & Aggregates Australia Construction Material Processors Association Victoria Energy Council Environmental Justice Australia Energy Australia Hobsons Bay City Council Jetmaster Victoria Loy Yang B Power Station University of Melbourne Voices of the Valley
Water	<ul style="list-style-type: none"> Australian Paper Brimbank City Council Central Highlands Water City West Water Coliban Water Environmental Justice Victoria Golder Associates Melbourne Water Municipal Association Victoria North East Water South East Water Victorian Farmers Federation Victorian Transport Association VicWater Voices of the Valley Wannon Water Western Water Yarra Valley Water

Stakeholder working group	Members
<p>Noise</p>	<p>Acoustic Consulting Arts Centre Melbourne Arup Australian Hotels Association Banyule City Council Bar Open Broner Consulting City of Greater Bendigo City of Greater Geelong City of Melbourne Cookie Darebin City Council Heatherdale Community Action Group Illusive Presents Johnston Audio Services JPJ Audio Australia Mushroom Group Marshall Day Acoustics Moyne Shire Council Municipal Association of Victoria Music Victoria Noises Port of Melbourne SLR Consulting University of Melbourne Victoria Police Victorian Automobile Chamber of Commerce Victorian Chamber of Commerce and Industry Wyndham City Council Yarra City Council</p>
<p>Contaminated land</p>	<p>Australasian Contaminated Land Consultants Associations (ACLCA) Better Regulation Victoria Coffey GHD Golder Associates Greencap John Holland King & Wood Mallesons Level Crossings Victoria LogiCamms Consulting Pty Ltd t/a Monarc Environmental Major Road Projects Victoria Metro Tunnel Municipal Association of Victoria Orangrove Consulting RMIT University West Gate Tunnel Authority</p>

Stakeholder working group	Members
Waste and permissions	<p>Australian Organics Recycling Association Ltd (AORA) Bega Central Highlands Water Chemistry Australia City West Water Cleanaway Dairy Australia Elmore Compost Environment Victoria Environmental Justice Australia Friends of the Earth Australia Fonterra Dairy Gippsland Water Golder Associates Hanson Landfill Services Lower Murray Water Melbourne Water Municipal Association of Victoria MWAA North East Water Saputo Dairy Australia Senversa South East Water SUEZ Victorian Automobile Chamber of Commerce Victorian Chamber of Commerce and Industry Victorian Farmers Federation Victorian Transport Association/Victorian Waste Management Association Victorian Waste Management Association VicWater Waste Management Association of Australia (WMAA), Victorian Branch Yarra Valley Water</p>

7.2.2 Industry and community reference groups

EPA has established six Industry Reference Groups (IRG), (agriculture, construction and infrastructure, major industries, small business and manufacturing, waste and recycling, and water) and a Community Reference Group (CRG) representing community interests, to consult on development of the proposed final Regulations and ERS.³⁷

Table 4: List of IRGs and the CRG and their members

Reference group	Members
Agriculture IRG	Agriculture Victoria AUSVEG Australian Fodder Industry Association Australian Lot Feeders Association Australian Meat Industry Council Australian Pork Ltd Birchip Cropping Group Dairy Australia Fruit Growers Victoria Nursery and Gardening Industry Victoria Seafood Industry Victoria Victorian Farmers Federation Wine Victoria
Construction and infrastructure IRG	Association of Land Development Engineers Australasian Land and Groundwater Association Australian Constructors Association Australian Contaminated Land Consultants Association Australian Industry Group Cement Concrete and Aggregates Australia Civil Contractors Federation Vic Construction Material Processors Association Demolition & Asbestos Industry Association of Victoria Ltd Development Victoria Housing Industry Australia Infrastructure Sustainability Council of Australia Major Transport Infrastructure Authority Master Builders Association Victoria Master Plumbers (and Mechanical Services Association) Australia Property Council of Australia Urban Development Institute Australia Victorian Building Authority Victorian Chamber of Commerce and Industry Victorian Planning Authority VicTrack WorkSafe Victoria

³⁷ More information can be found at <https://www.epa.vic.gov.au/about-epa/who-epa-works-with/reference-groups>

Reference group	Members
Community Reference Group (CRG)	<p>Alison Kelly — Centre for Sustainability Leadership Andrew Kelly — Yarra Riverkeeper Brendan Sydes — CEO, Environmental Justice Australia Geoff McFarlane — President, Bellarine Landcare Group, Victorian Landcare Council Harry von Moorst — President, Western Region Environment Centre Ken Winkel — Doctors for the Environment Australia Nicholas Aberle — Campaign Manager, Environment Victoria Ray Radford — Friends of Merri Creek Tony O’Hara — Suez Hallam Rd and Taylors Rd Community Reference Groups Wendy Farmer — President, Voices of the Valley</p>
Major industries IRG	<p>AGL Energy Alinta Energy Alcoa Cement Concrete & Aggregates Australia Chemistry Australia Energy Australia Exxon Mobil Minerals Council of Australia Viva Energy Australia</p>
Small business and manufacturing IRG	<p>Advanced Manufacturing Advisory Council Australian Food & Grocery Council Australasian Institute of Surface Finishing Australian Meat Industry Council Australian Renderers Association Australia Retailers Association Brewers Association of Australia Dairy Manufacturers Sustainability Council Dry Cleaning Institute of Australia Hair & Beauty Industry Association Independent Brewers Association Manufacturing Australia Master Grocers Association— Independent Retailers National Retailer’s Association Printing Industries Assoc. of Australia Restaurants and Catering Industry Assoc. Victoria Small Business Association of Australia Small Business Victoria South East Melbourne Manufacturers Alliance Tourism Accommodation Australia (Vic) Victorian Small Business Commission Victorian Automobile Chamber of Commerce Victorian Chamber of Commerce and Industry</p>

Reference group	Members
<p>Waste and recycling IRG</p>	<p>Australian Council of Recycling Australian Landfill Owners Association Australian Metal Recycling Industry Association Australian Nursing and Midwifery Federation Australian Organics Recycling Association Australian Packaging Covenant Organisation Barwon South West Waste & Resource Recovery Group Gippsland Waste & Resource Recovery Group Goulburn Valley Waste & Resource Recovery Group Grampians & Central West Waste & Resource Recovery Group Loddon Mallee Waste & Resource Recovery Group Metropolitan Waste & Resource Recovery Group Municipal Association of Victoria National Waste and Recycling Industry Council North East Waste & Resource Recovery Group Tyre Stewardship Australia Victorian Automobile Chamber of Commerce Victorian Chamber of Commerce and Industry Victorian Local Governance Association Victorian Waste Management Association Waste Industry Alliance Waste Management and Resource Recovery Association of Australia</p>
<p>Water IRG</p>	<p>Barwon Water Central Highlands Water City West Water Coliban Water East Gippsland Water Gippsland Water Goulburn Valley Water Grampians Wimmera Mallee Water Lower Murray Water Melbourne Water North East Water South East Water South Gippsland Water Southern Rural Water Wannon Water Western Water Western Port Water Yarra Valley Water</p>

7.3 Appendix C — Summary of key issues and responses

Table 5: Summary of key issues and responses

Issue	Issue summary	Response
Specification and detail in the draft regulations and ERS		
Specification and detail in the draft regulations and ERS	The draft regulations and ERS did not reflect the detail in related clauses under the existing environment protection framework.	No change made: While the new framework may not specify all risks of harm to human health and the environment that may arise, it maintains, or strengthens the equivalent protections set out in the existing subordinate instruments. The risks remain regulated through the new tools available under the new EP Act that create powerful obligations on duty holders. Any relevant and current information from existing tools will continue to form part of Victoria's state of knowledge that informs compliance expectations.
Contaminated land		
General complexity of the draft regulation drafting and limitations of sampling methodology	Comments that the draft contaminated land regulations are complex. In particular, that the complexity of statistical analysis requirements for the duty to notify led to uncertainty about how to comply for unique sites.	No change made: The technical detail has been kept as it is required to reflect national and international standards and provide clarity and certainty on the new duty across a broad range of contaminants. EPA will provide further clarity through
Determining contamination in areas of naturally elevated contaminants or elevated due to historical land use	Concern about how to determine contamination in areas of elevated contaminants due to natural or historical land use factors. Concern about the potential burden under the duties to notify and manage contaminated land in these areas.	No change made: The new framework enables EPA to consider and take account of these circumstances by making a determination that sets the background levels for substances. EPA will develop determinations to help identify background levels to take into account historic or natural factors. Under the new EP Act, the naturally occurring concentration in the vicinity is the background concentration where a determination, the proposed final Regulations or ERS do not set a background level.
Duty to notify of contaminated land: Thresholds for notifiable contamination	<p>Concern that the thresholds for notification of ground and surface water contamination were very low and disproportionate to risks posed to human health.</p> <p>Request that exemptions to the duty to notify should be broadened to include where an audit has commenced but is not yet complete or where EPA may have become aware of the contamination through other means.</p> <p>Concerns that duties and any related costs apply where the contamination was not due to the person currently in control or management of the land.</p>	<p>Change made: The proposed final Regulations limit notifiable circumstances for the duty to notify for groundwater contamination to those where the impacted groundwater is used or may be used for specific activities (such as for drinking, stock watering or irrigation), or discharges or is likely to discharge into surface water. The adjustment focuses notifiable circumstances on human health exposure risk.</p> <p>No change made: The proposed final Regulations have maintained the list of exemptions from the duty to notify. This ensures EPA's ability to gather information to address information gaps and support duty holders to address contamination risks. The new EP Act contains recovery in court of reasonable compliance costs from any person responsible for causing or contributing to the contamination.</p>

Issue	Issue summary	Response
Duty to notify of contaminated land: Asbestos contamination	Concern about the inconsistent application of the draft regulations to determine if notification is required for asbestos. Suggestion that the regulations could include thresholds that reflect the NEPM ASC and for further definition and clarity.	No change made: The proposed final Regulations do not incorporate the NEPM ASC criteria as this would create inconsistencies with the OHS Regulations. Asbestos is defined in other Victorian legislation and further clarity will be provided in EPA guidance.
Duty to notify of contaminated land: Emerging contaminants	Clarification sought about whether the duty to notify extends to emerging contaminants not specifically provided for in the draft regulations.	No change made: The duty to notify continues to apply to all contaminants listed in Section 6 of Schedule B1 of the NEPM.
Duty to manage contaminated land: Requirement to clean up non-aqueous phase liquids	Requests for EPA for review the draft regulation to clean up non-aqueous phase liquids to avoid undue compliance burden compared to the risks.	No change made: The proposed final Regulations have kept the regulation. The regulation was brought across from requirements under SEPP (Waters) and, given the risks posed, the requirements have been retained.
Interaction with the Victoria Planning Scheme	Clarification sought about the relationship between the VPPs and the new framework for contaminated land.	No change made: The Government will ensure consistency between the environment protection framework and the Victorian planning system. DELWP and EPA are working to integrate the contaminated land framework and the land use planning system.
Contaminated land		
General complexity of the draft regulation drafting and limitations of sampling methodology	Comments that the draft contaminated land regulations are complex. In particular, that the complexity of statistical analysis requirements for the duty to notify led to uncertainty about how to comply for unique sites.	No change made: The technical detail has been kept as it is required to reflect national and international standards and provide clarity and certainty on the new duty across a broad range of contaminants. EPA will provide further clarity through guidance.
Determining contamination in areas of naturally elevated contaminants or elevated due to historical land use	Concern about how to determine contamination in areas of elevated contaminants due to natural or historical land use factors. Concern about the potential burden under the duties to notify and manage contaminated land in these areas.	No change made: The new framework enables EPA to consider and take account of these circumstances by making a determination that sets the background levels for substances. EPA will develop determinations to help identify background levels to take into account historic or natural factors. Under the new EP Act, the naturally occurring concentration in the vicinity is the background concentration where a determination, the proposed final Regulations or ERS do not set a background level.

Issue	Issue summary	Response
<p>Duty to notify of contaminated land: Thresholds for notifiable contamination</p>	<p>Concern that the thresholds for notification of ground and surface water contamination were very low and disproportionate to risks posed to human health.</p> <p>Request that exemptions to the duty to notify should be broadened to include where an audit has commenced but is not yet complete or where EPA may have become aware of the contamination through other means.</p> <p>Concerns that duties and any related costs apply where the contamination was not due to the person currently in control or management of the land.</p>	<p>Change made: The proposed final Regulations limit notifiable circumstances for the duty to notify for groundwater contamination to those where the impacted groundwater is used or may be used for specific activities (such as for drinking, stock watering or irrigation), or discharges or is likely to discharge into surface water. The adjustment focuses notifiable circumstances on human health exposure risk.</p> <p>No change made: The proposed final Regulations have maintained the list of exemptions from the duty to notify. This ensures EPA's ability to gather information to address information gaps and support duty holders to address contamination risks. The new EP Act contains recovery in court of reasonable compliance costs from any person responsible for causing or contributing to the contamination.</p>
<p>Duty to notify of contaminated land: Asbestos contamination</p>	<p>Concern about the inconsistent application of the draft regulations to determine if notification is required for asbestos. Suggestion that the regulations could include thresholds that reflect the NEPM ASC and for further definition and clarity.</p>	<p>No change made: The proposed final Regulations do not incorporate the NEPM ASC criteria as this would create inconsistencies with the OHS Regulations. Asbestos is defined in other Victorian legislation and further clarity will be provided in EPA guidance.</p>
<p>Duty to notify of contaminated land: Emerging contaminants</p>	<p>Clarification sought about whether the duty to notify extends to emerging contaminants not specifically provided for in the draft regulations.</p>	<p>No change made: The duty to notify continues to apply to all contaminants listed in Section 6 of Schedule B1 of the NEPM.</p>
<p>Duty to manage contaminated land: Requirement to clean up non-aqueous phase liquids</p>	<p>Requests for EPA for review the draft regulation to clean up non-aqueous phase liquids to avoid undue compliance burden compared to the risks.</p>	<p>No change made: The proposed final Regulations have kept the regulation. The regulation was brought across from requirements under SEPP (Waters) and, given the risks posed, the requirements have been retained.</p>
<p>Interaction with the Victoria Planning Scheme</p>	<p>Clarification sought about the relationship between the VPPs and the new framework for contaminated land.</p>	<p>No change made: The Government will ensure consistency between the environment protection framework and the Victorian planning system. DELWP and EPA are working to integrate the contaminated land framework and the land use planning system.</p>

Issue	Issue summary	Response
Permissions		
Request to extend maximum permission duration	Requests for maximum permission duration to be extended.	No change made: The maximum permission duration is set in the new EP Act and cannot be increased in the final regulations. The Government supports fixed terms for licences. Permissions that expire may be re-applied for in the case of licences and simply renewed in the case of permits and registrations.
Changes sought to thresholds for waste and resource recovery permission activity	Requests for changes to thresholds for waste and resource recovery permission activity, including larger volumes of waste without a permission or larger volumes for each permission type.	No change made: The waste resource recovery volume thresholds set have not been increased and the requirements for permission remains. This is a critical part of the new environment protection framework and will enable EPA and the Government to minimise the risk of harm to human health and the environment from mismanagement of waste.
Relationship between contaminated soil (Category D) permit and definition of project site	Concern that the draft definition for a 'project site' would not allow the safe reuse and containment of lower-level contaminated soils (Category D waste soils) within a major project on multiple sites.	Change made: The proposed final Regulations include a broader definition of 'project site'. This will enable EPA, where appropriate, to issue a permit to allow lower-level contaminated soils to be contained or reused and appropriately managed across large scale public infrastructure projects.
Exemptions from requiring a permission	Concern that the draft regulations did not clearly continue to allow existing exempt activities, which could bring many new sites into the licensing regime including for certain discharges to the atmosphere, and to receive or use biosolids or wastewater.	Change made: The proposed final Regulations include minor changes to align with the policy intent to generally retain existing exemptions. This includes amending the activity descriptions for A14 and A15 permits to clarify the coverage of the permit requirement with respect to a supplier or user of reclaimed wastewater or biosolids and new exemptions for smaller Class B and C reclaimed wastewater schemes and for modification activities with discharges or emissions to the atmosphere from specified sources. No change: Although a minor change has been made to provide exemptions for modification activities with discharges or emissions to the atmosphere from specified sources, the proposed final Regulations do not replicate the existing broader general exemptions for discharges or emissions to the atmosphere. EPA will instead develop a determination under the new EP Act to establish that a permission is not required where discharges or emissions are in accordance with specified requirements.

Issue	Issue summary	Response
Temporary storage of asbestos	Requests to increase the volume of asbestos that can be stored, and time it can be stored for, under a registration (A22 — Temporary storage — asbestos).	No change made: The proposed final Regulations are consistent with the existing regulations, the current OHS Regulations and the Compliance code: Managing asbestos in workplaces. Changes would create misalignment with other Victorian regulations for asbestos management and current practices.
Clarifying when a financial assurance is required	Further clarity sought about when a financial assurance is required and how it is calculated. Some organisations sought exemption from financial assurance requirements.	No change made: The proposed final Regulations do not provide any exemptions from financial assurances. The new EP Act sets out matters EPA must have regard to when calculating the amount of financial assurance. EPA will publish information that will provide more detail about this.
Clarifying scope of definitions or activities	Clarity was sought to define terms such as: 'large containers' for those with hazardous residues banned from landfill; 'negligible quantities' with respect to e-wastes banned from landfill, and 'Tunnel ventilation systems'.	Change made: Where necessary, the proposed final Regulations include a number of minor changes to clarify the circumstances when a permission may be required or must be refused. These changes include detail on which large containers are banned from landfill and to better match the activity name to the activity description for 'road tunnel ventilation systems'. No change made: The proposed final Regulations do not define 'negligible quantities' of e-waste as this term is one in common use across regulatory frameworks and the existing regulations.
Level of fees and fee design for permissions	Concern expressed that some fees were too high and other fees should not be required because they are unreasonable, not proportionate to effort by EPA or may drive avoidance and noncompliance.	Change made: Several fees have been refined to support cost recovery and minor adjustments have been made to correct errors and retain arrangements in the EP Act 1970 enabling the recovery of differences in annual licence fees following licence amendment.

Issue	Issue summary	Response
On-site wastewater management systems (OWMS)		
Reliance on the GED as the key regulatory control for the maintenance and operation of OWMS	Concern that householders (who operate the majority of OWMS) would not understand how to comply with the GED and that local government may be limited in what they could regulate and enforce. Requests were made to introduce a permit for OWMS operation and maintenance.	Change made: A new part (Part 5.7) has been included in the proposed final Regulations to set clear obligations on persons in management or control of land on which an OWMS is located. The changes introduce new duties for the operation and maintenance of OWMS, a duty to keep maintenance records and requirement to respond to problems and notify council of system failures. The proposed final Regulations also enable local government to order maintenance of a system. A set of offences that are enforceable by local government, for breach of these duties, are included in the final Regulations. These regulations apply to all existing OWMS, including legacy systems.
Ability for local government to recover costs for permits to construct, install and alter OWMS	Comments that the fee regime in the draft regulations was inflexible and did not adequately enable local government to recover costs for processing a permit to construct, install or alter an OWMS.	Change made: The fee scheme in the proposed final Regulations reflects new data provided by local government and better provides for cost recovery. Greater fee flexibility has been introduced.
Ability for local government to recover costs to regulate the operation and maintenance of OWMS	Concern that the draft regulations did not enable local government to recover costs associated with regulating the operation and maintenance of OWMS. Suggestion made that a permit should be required for ongoing operation of OWMS to cover the costs associated with compliance and enforcement.	No change made: Recovering costs through a permit for operation would not be consistent with best practice cost recovery arrangements. The new legislation does not introduce an additional regulatory role for local government, and it is not anticipated that the new environment protection framework will increase overall regulatory costs.
Enforcement for failure to obtain a permit	Concern about the absence of an offence for failure to obtain a permit for OWMS.	No change made: Regulations are not required to enforce the offence for failure to obtain a particular permit. The offence applies to anyone who undertakes an activity without a permission when one is required under the new EP Act and proposed final Regulations.
Duration of permit to construct, install or alter an OWMS	Concern that the five-year duration of a permit to construct, install or alter an OWMS was out of step with local government's usual two-year period for domestic building permits.	Change made: The proposed final Regulations now provide that the duration of an OWMS permit can be between two and five years or to the date the certificate approving use of the system is issued, if earlier than five years. The maximum period a permit may remain in force under the new EP Act is five years.
Definition of 'alteration'	Request that the definition of 'alteration' of OWMS should make clear that it includes any change to design or construction or change to hydraulic flow of the system, and to clarify how this differed from maintenance.	Change made: The proposed final Regulations have been changed to clarify that an 'alteration' of an OWMS includes changing its design or construction. It also includes a change to the operation of the system or to the premises where the system is located that may increase the hydraulic flow or organic load of the system. It does not include general maintenance.

Issue	Issue summary	Response
<p>Administrative burden to provide annual returns</p>	<p>Concern that the requirement for local government to submit annual returns was overly burdensome for little benefit.</p>	<p>Change made: The proposed final Regulations have been changed to no longer require local government to submit annual returns.</p>
<p>Waste</p>		
<p>Waste classification: thresholds for classifying waste</p>	<p>Several technical issues were identified with the <i>Waste classification protocol</i> and the Waste Disposal Categories — Characteristics and Thresholds (WDC document) which would limit operational viability.</p>	<p>Change made: The proposed final Regulations and waste classifications protocol include several corrections including to cross-referencing, missing lower bound thresholds, a clarified definition of tyres, updated values for pH, and an increased threshold for manures and animal bedding.</p>
<p>Waste classification: PFAS soils</p>	<p>Comments that including PFAS contaminant thresholds in subordinate legislation may provide a rigid threshold not suited to the evolving science around PFAS and is inconsistent with the more flexible approach taken in the PFAS NEMP and EPA Interim Position on PFAS. Also concern that the proposed threshold would unnecessarily result in greater volumes of soil sent to landfills and limit reuse options.</p>	<p>Change made: The final WDC document does not include thresholds for PFAS. To enable greater flexibility and capacity to keep pace with changing science. PFAS contamination will be assessed on a case by case basis in line with the best available science, including PFAS NEMP. The approach to PFAS-impacted soil for reuse is conservative based on current understanding of science and risk.</p>
<p>Waste classification: trade waste</p>	<p>Concern that the classification of trade waste as industrial, priority or reportable priority waste may significantly increase compliance burden for water corporations due to requirements for permissions or lawful place duties for disposal of waste.</p>	<p>No change made: Excluding trade waste from the waste framework would result in a significant gap in managing risks to human health and the environment from waste. This is due to the availability of different transport, treatment and receival pathways for these wastes. The proposed final Regulations deem a water corporation’s sewer system a lawful place to receive trade waste when in accordance with a trade waste agreement under the Water Act 1989. The terms of discharge to sewer would be governed by the trade waste agreement and subject to the capacity of the water treatment plant at which the waste is treated. Water authority operating licences will set out the necessary conditions by which it should control and manage risks from trade waste.</p>

Issue	Issue summary	Response
Waste classification: prohibition on mixing, blending or dilution priority waste	Concern that the prohibition on mixing, blending or diluting priority waste had potential to limit the ability to use waste in waste-to-energy projects or for reuse options.	Change made: While the prohibition has been retained, the proposed final Regulations enable waste to be mixed, blended or diluted to a lower-risk category if a designation has been issued by EPA.
Transition of waste classifications under the existing scheme	Concern that the transitional regulation to 'save' a waste classification made under the <i>Environment Protection (Industrial Waste Resource) Regulations 2009</i> for one year from EP Act commencement was too short and would impact on existing commercial arrangements. An additional year was sought to increase business certainty and aid adaptation to the new framework.	Change made: The proposed final Regulations continue existing specific classifications made under the <i>Environment Protection (Industrial Waste Resource) Regulations 2009</i> that are in place at EP Act commencement for two years from commencement. Under the proposed final Regulations the term 'designation' equates to a classification under the existing regulations.
Lawful place: declaration of use	There was broad concern expressed on the potential for the new DoU instruments designed to enable reuse of waste material to be overly burdensome compared to the risks posed by that waste. In particular, concerns about the use of DoUs for fill material, organic waste, other farm wastes and aggregates.	Change made: The proposed final Regulations have reduced the information required of waste producers and providers in a DoU, requiring only enough information to enable consent from receivers. They better balance the impact on duty holders with risk to the environment, making clear that a DoU will not be required when the deposit or reuse of a waste is subject to a determination made by EPA, or where EPA authorises an alternative scheme to manage risk. The proposed final Regulations also remove the 60-day limit for temporary storage of fill material under a DoU and clarify that fill material generated and reused within the same cadastral boundary does not need a DoU.
Lawful place: municipal versus industrial waste	Concern that the draft regulations deem municipal waste as industrial waste once aggregated at a transfer station, which introduces new administrative and compliance burden, such as increases in levies and fees, obtaining a permission and ensuring waste is disposed at a lawful place.	No change made: The proposed final Regulations continue to deem municipal waste aggregated at transfer stations as industrial waste. The relevant waste duties and permission requirements will apply. While complying with these duties and obtaining appropriate permissions may impose some additional burden, this waste has in the past proven difficult for EPA to monitor and manage. Classifying this waste improves visibility and allows EPA to require compliance with certain standards to manage, reuse or dispose of it. The permissions framework will also capture sites that receive municipal waste, with permission requirements that are commensurate to risk. Municipal waste levy will continue to apply where landfills are provided evidence that the source of the waste is municipal collection.

Issue	Issue summary	Response
<p>Enabling product stewardship schemes and government collection schemes and projects</p>	<p>Concern that the draft regulations created a disproportionate burden for 'drop-off points' receiving and storing small amounts of reportable priority waste and priority waste from domestic and some trade sources, such as product stewardship schemes and government collection schemes and projects.</p>	<p>Change made: The proposed final Regulations provide for a duty holder to apply for, or enables EPA to issue a designation or s48 determination to allow for the lawful collection of wastes for product stewardship schemes or government collection schemes or programs to collecting transport or collect small amounts of hazardous wastes, consistent with existing practice.</p>
<p>Lawful place: waste acid sulfate soils</p>	<p>Concern that the draft regulations did not clearly include waste acid sulfate soils (WASS) as a waste type, which may make it difficult to acquit lawful place duties and appropriately manage and dispose of waste soils. Concern that a DoU would not appropriately control the risks from WASS, which require specialist handling.</p>	<p>Change made: The proposed final Regulations include a new waste code for WASS with contamination levels not exceeding fill criteria. This will enable acquittal of lawful place duties and set clear and transparent requirements for receipt, treatment and disposal. EPA plans to provide further information that will highlight the existing state of knowledge for best practice management of WASS. New waste codes clarify that WASS and end-of-life vehicles are in the waste management framework. Receipt of Actual or Potential WASS has been added as an activity requiring a registration to clarify lawful place.</p>
<p>New waste codes to clarify management of end-of-life vehicles</p>	<p>Concern that end-of-life-vehicles are not identified as a specific waste stream and that lack of awareness that end-of-life-vehicles are an industrial waste could result in mismanagement.</p>	<p>Change made: The proposed final Regulations include a new waste code for end-of-life vehicles to enable their clear identification and recognition as industrial waste. This clarifies but does not change the approach to regulation of end-of-life vehicles.</p>
<p>Naturally elevated contaminants, or elevated due to historical land use</p>	<p>Requests for the classification of contaminated soil to consider existing background levels of contaminants and to allow for reuse of soils at sites with the same elevated background levels as the waste soil.</p>	<p>Change made: The proposed final Regulations enable EPA to issue designations to change the classification of the soils to 'fill material' where the soil is sourced from areas that are naturally-elevated or elevated due to historical land use. The soil must be used in the same area that has the same level of elevated contaminant.</p>
<p>Transport of dangerous goods</p>	<p>Requests to ensure that the transport requirements for wastes that are dangerous goods be consistent with requirements in other jurisdictions and the DG Act and to appropriately placard vehicles, similar to the existing regulations.</p>	<p>Change made: The proposed final Regulations align with the DG Act by requiring a driver to:</p> <ul style="list-style-type: none"> • undertake dangerous goods training • adhere to load restraint requirements • keep records on-board to inform emergency services in the event of an accident. <p>No change made: Vehicle placarding requirements will be managed through case-by-case assessment and specific conditions on transport permissions.</p>

Issue	Issue summary	Response
Landfill design and operation	Concern about the regulation of the construction and management of landfills under the draft regulations, including: the requirement for landfill flares to achieve 'complete combustion' of landfill gas; the level of prescription of operating standards for leachate levels and methane action levels; and the absence of restriction of landfill construction in certain groundwater areas.	<p>Change made: The proposed final Regulations require 98 per cent destruction efficiency (instead of 100 per cent), or the minimum recommended residence time of 0.3 seconds at a minimum temperature of 1000°C.</p> <p>No change made: The standards for leachate or methane gas release were not altered — it is important that all reasonable steps are taken to avoid exceeding the methane gas action limits and reaching explosive levels.</p>
Waste levy payment terms and clarifying how this applies to on-site Category D waste	Concern the requirement for payment of the waste levy to EPA within 21 days was not practicable given current commercial arrangements. They suggested maintaining the status quo of 90 days (64 business days).	Change made: The payment terms have been changed to 64 business days (90 days), in line with the existing environment protection framework.
Air		
Regulation of greenhouse gas emissions	Concern that the draft regulations do not include a framework to regulate GHG emissions.	<p>No change made: The Government considers reducing GHGs to be a matter for government policy rather than direct regulation under the environment protection framework. The Government's approach to reducing GHGs is set out in the CC Act which establishes a long-term emissions reduction target of net zero emissions by 2050 and a series of five-yearly interim targets and sector pledges to track the State's progress to its long-term target. The EPA will continue to acquit its obligations under Section 17 of the CC Act when making statutory decisions.</p>
Air quality impacts from planned burns and timber harvesting burns	Concern that the draft regulations did not adequately mitigate air quality and human health impacts from smoke arising from planned burns, the burning of residential harvested timber or other burning off.	<p>No change made: These risks to human health and environment remain regulated through the new tools available under the new EP Act. The GED will require people engaging in planned burning to take reasonable steps to reduce the risk of harm to human health and the environment from the smoke. These controls may include notifying potentially affected communities of planned burns or considering alternatives to burning where possible and appropriate. Fire managers need to weigh up community impacts from planned burning, versus impacts — including smoke — arising from bushfires. The Government is preparing a Victorian Air Quality Strategy to tackle air quality challenges, including the impacts of smoke from planned burns.</p>

Issue	Issue summary	Response
Regulation of solid fuel heaters	Suggestions made for the regulation of solid fuel heaters, including: introducing regulations to require wood heaters to burn efficiently; to prohibit the installation of wood heaters that are non-compliant with Australian/New Zealand standards; and to phase out wood stoves and fires entirely.	No change made: Suggested changes were not incorporated as these would duplicate existing regulations in Victoria or result in Victorian solid fuel heater standards that are inconsistent with the rest of Australia. The approach for the regulation of the manufacture and supply of wood heaters is informed by the recent review of the <i>Waste Management Policy (Solid Fuel Heaters)</i> which led to a variation to the policy in late 2018. The Government is preparing a Victorian Air Quality Strategy to tackle air quality challenges, including the impacts of smoke from residential wood heating.
National Pollutant Inventory (National Environment Protection) Measures reporting requirements	Suggestions about the requirement to report for the National Pollutant Inventory National Environment Protection Measures (NPI NEPM), including: that the data collected should be used to establish a maximum baseline for each relevant metric; to require the publication and public notice of any request for exemption to report on grounds of commercial-in-confidence information; and to request an exemption from reporting for the agriculture sector and for further information on how rural and regional areas should measure their emissions.	No change made: The proposed final Regulations incorporate the requirements set out in the NPI NEPM. Deviating from NPI NEPM requirements would be inconsistent with the national approach and compromise the effectiveness of the NPI. Further guidance on which facilities and industries are required to report, how to estimate emissions and report is provided on the NPI website.
Vehicle emissions	Various issues raised with the draft vehicle emissions regulations, including: clarification about whether vapour pressure standards apply to petrol refined in Victoria or petrol for supply in Victoria; a request to introduce anti-idling regulations; and exemption for passenger vehicles linked to agriculture businesses.	Change made: The proposed final Regulations clarify the intent that vapour pressure standards apply to fuel supplied in Victoria, not to fuel refined in Victoria for supply to other states. No change made: The proposed final Regulations have not been changed to introduce anti-idling regulations or to create Victoria-specific emission standards, as this would cause regulatory overlap with national standards. The vehicle emissions standards and application of them remain in the proposed final Regulations — they continue to apply to vehicles on a highway and do not cover vehicles on a farm or paddock.

Issue	Issue summary	Response
<p>Lack of specific regulation for some risks to human health and the environment</p>	<p>Uncertainty about how risks from emissions to air would be managed, due to perceived lack of regulation compared to the existing environment protection framework including provision of the PEM and SEPP (AQM). Concerns raised included: how to manage and monitor Class 3 substances; the status of the exemption for release of visible emissions from safety relief flares; and how EPA will set emissions limits from stationary sources, regulate emissions from commissioning, start-up and shut-down activities at power plants, and manage nuisance dust.</p>	<p>No change made: Risks to human health and the environment remain regulated through the new tools available under the new EP Act. These include the GED and EPA licences (which will set site-specific emission limits). As under the existing environment protection framework, these new tools will require emissions to be managed in accordance with best practice. The proposed final Regulations provide equivalence to SEPP AQM in relation to the management of Class 3 substances — the requirements apply to all licensed businesses that handle Class 3 substances. The PEM is not directly transferred into the new regime as the requirements for safety relief flaring will be determined in accordance with the GED.</p>
<p>Noise</p>		
<p>Construction noise</p>	<p>Clarity was sought on how the draft regulations would address both residential and commercial construction noise, given that construction noise is not directly regulated under the noise framework.</p>	<p>No change made: The proposed final Regulations do not include specific noise limits for construction noise because, like other diffuse sources of pollution, this risk is best managed through the tools in the new EP Act. Construction noise will be regulated through a risk-based application of the GED and the new unreasonable noise provisions. This will be supported by EPA guidance on controls that a duty holder should consider implementing to eliminate or otherwise reduce the noise from construction activity.</p>
<p>Unreasonable residential noise</p>	<p>Clarification sought about whether the new environment protection framework enables enforcement of unreasonable noise from any source at a residential premise, and recommendations for new sources to be explicitly included as sources of noise that are considered unreasonable.</p>	<p>No change made: The definition of unreasonable noise in the new EP Act does not require specific noise sources to be prescribed for it to be considered unreasonable noise. The new environment protection framework can enforce unreasonable residential noise from any source at a residential premise. EPA will produce guidance to assist assessment of unreasonable noise in a residential context.</p>
<p>Noise from commercial, industrial and trade premises</p>	<p>Exclusion sought for some sources of noise from being assessed when determining if noise is unreasonable or aggravated due to concern about compliance in emergency situations that require noisy equipment or infrastructure.</p>	<p>Change made: The proposed final Regulations include an exemption from assessment for 'equipment used in an emergency' and include a definition of emergency that reflects the definition in the <i>Emergency Management Act 2013</i>. The change broadens the exemption for equipment used solely in an emergency context to include all types of equipment when used in relation to an emergency.</p>

Issue	Issue summary	Response
Noise sensitive areas	Concern that the application of new noise sensitive areas would create compliance expectations for entertainment noise that were not practical or proportionate, including requirements to attenuate noise even when the entertainment venue and noise sensitive areas do not operate at the same time, and the requirement to moderate noise around accommodation facilities located near rural festivals where the facilities are used for accommodation for these events.	Change made: The proposed final Regulations apply the noise limits for the new noise sensitive areas of childcare centres, kindergartens, primary and secondary schools only during their normal hours of operation. Where an outdoor entertainment event (including festival) or outdoor entertainment venue is operating in a rural area, relevant camping grounds, caravan parks and tourist establishments will not be considered as noise sensitive areas for the duration of that event.
Noise from entertainment venues	Concern that the proposed regulatory controls would increase regulatory burden and compliance costs and reduce the economic viability of the live music entertainment sector. The permission requirements for outdoor entertainment venues or events were challenged, with supporting evidence provided. Comments made that the number of complaints received is not an appropriate metric when considering permissions as many complaints are found not to be substantiated.	Change made: The proposed final Regulations better accommodate a range of cultural events and clarify and broaden circumstances when a permission is not needed for an outdoor event. They also specify that it is the 'history of complaints' rather than simply the number of complaints that is to be considered when assessing applications.
Agent of change	Submissions sought the introduction of a uniform approach where noise from all entertainment venues would be assessed using an indoor measurement from inside a relevant residential premises with doors and windows closed.	No change made: The agent of change provisions in the proposed final Regulations have not been changed to include uniform indoor measurement, and instead remain in step with the approach set in the VPPs. Going beyond the approach set in the VPPs would create inconsistencies between key regulatory frameworks for noise and would have significant amenity impacts for residents.
Aircraft noise	Concern expressed about the impact on human health of noise from aircraft operating at Tyabb Airport near residential areas. Submissions sought a night time curfew, limit to further expansion of operations or runways, bans on helicopters except in emergencies and no flights on Christmas Day or Good Friday except for emergencies.	No change made: The Commonwealth Government generally regulates noise from in-service aircraft, including through the Air Navigation (Aircraft Noise) Regulations 2018. The Commonwealth is currently conducting a review to determine the appropriate scope and breadth of future noise regulation in relation to different types of aircraft including historic aircraft that operate at Tyabb Airport. Where aspects of aircraft noise falls within the remit of the EP framework, the GED, unreasonable noise and aggravated noise provisions of the new EP Act are considered suitable controls to manage noise from private airfields, where relevant.

Issue	Issue summary	Response
<p>Noise Protocol and technical noise measurements</p>	<p>Comments on a range of technical matters related to measurement of noise as set out in the Noise Protocol.</p>	<p>Change made: The draft Noise Protocol has been changed where necessary.</p>
<p>Water</p>		
<p>Protecting areas of high conservation value</p>	<p>Requests for a continuation of a provision limiting wastewater discharges into surface waters of high conservation value in SEPP (Waters), particularly due to concern that omitting this provision will weaken the environment protection of Western Port Bay and other sensitive environments.</p>	<p>No change made: Tools under the new EP Act will provide equivalent protections for waters of high conservation value, both through duties placed on industry and other duty holders, and through the obligations placed on EPA. The GED will essentially require a higher standard of care where an area is known to be a sensitive environment — such as Ramsar sites and areas of high conservation value — due to the degree of harm that may result if risks eventuate. Also, EPA must refuse a permission application if it considers the activity poses an unacceptable risk of harm to human health and the environment. In addition to protections under the new EP Act, the Commonwealth’s <i>Environment Protection and Biodiversity Conservation Act 1999</i> also addresses the protection of Ramsar wetlands.</p>
<p>Clarifying regulation of discharges from ships</p>	<p>Concern that including 'cooling waters' and 'wash down' water in the definition of wastewater would place unreasonable limits on normal boating activities leading to unintended negative consequences, that the definition of 'aquatic pest' is broad, capturing any species that may foul agriculture and infrastructure, even when local to the area and not harmful.</p>	<p>Change made: The proposed final Regulations:</p> <ul style="list-style-type: none"> • allow the discharge of wash down waters and cooling water from normal boating activities, providing that risk is managed as far as reasonably practicable • exempt discharges of cooling waters from industrial processes if they are approved under a permission • clarify that native and local species are not considered aquatic pests and are not required to be captured.

Issue	Issue summary	Response
Environment Reference Standard		
Comparison of the draft ERS to existing subordinate instruments	<p>Concern that regulatory and compliance provisions of the SEPPs — including mixing zones and groundwater attenuation zones from SEPP (Waters), air quality design criteria for Class 1, 2, and 3 substances from SEPP (AQM) and air quality exceedance provisions of SEPP AAQ) — have not been translated into the draft ERS, and concern that as ‘reference standards’ the draft ERS represented a drop in the level of protection offered the environment.</p>	<p>No change made: The ERS is a new instrument that plays a new role in environmental decision-making. It provides a benchmark that helps to inform decision-making by describing a desired environmental state, and contextual information about potential harms, and other equally important uses. Unlike the SEPPs, an ERS will not contain compliance requirements, regulatory prohibitions, rules and obligations for environmental managers, monitoring or reporting requirements, or any directions or considerations concerning decision-making. The regulatory role played by those parts of the SEPPs is now delivered by other tools under the new EP Act and new subordinate legislation.</p>
ERS standards and their interpretation	<p>Comments that supported or did not support draft ERS standards, recommended alternative standards, identified technical errors, or sought guidance on interpretation of the ERS standards. Requests also for the ERS to consider, incorporate or to adopt more stringent standards than the NEPM AAQ air quality standards, following any variation to the NEPM.</p>	<p>Change made: Changes include: adding recognition of Traditional Owners to the proposed final ERS preamble; adding an environmental value for ‘musical entertainment’ to match an equivalent provision in SEPP N-2; clarifying that environmental values do not apply to constructed landfill cells; clarifying one surface water segment boundary and producing an open data digital spatial layer for segment boundaries, and other minor changes.</p> <p>No change made: The Government affirms its broad support for the ERS standards, noting that the Chief Environmental Scientist broadly supported the standards, while noting some limitations and areas where the science is less certain. The Government is committed to updating the ERS and to improve it over time, consistent with new scientific evidence and knowledge. Recommendations for new or alternative standards will be considered along with the Chief Environmental Scientist recommendations in a future review of priority ERS standards, which will follow an appropriate, rigorous scientific review process. Guidance will be produced to support interpretation of the ERS standards. The Government intends to update relevant air quality standards following any variation to the NEPM AAQ and will consider the standards that are appropriate following a variation.</p>
Guidance on taking the ERS into account	<p>Requests for guidance about how the ERS should be taken into account in decision-making, including when assessing permit applications, by the Responsible Authority when considering planning permit applications, and generally how the ERS would be integrated in the planning system.</p>	<p>No change made: EPA will provide guidance and information on the role of the ERS in decision-making where this is appropriate. Updates are being prepared for planning system instruments, including the VPPs, to ensure they are aligned with the environment protection framework. EPA will publish further information to guide general consideration of the ERS in the planning system.</p>

7.4 Appendix D — List of acronyms

Acronym	Full name
EP Act 1970	<i>Environment Protection Act 1970</i>
ADWG	<i>Australian Drinking Water Guidelines</i>
ANZG	<i>Australian and New Zealand Guidelines for Fresh and Marine Water Quality</i>
CC Act	<i>Climate Change Act 2017</i>
CRG	Community Reference Group
DELWP	Department of Environment, Land, Water and Planning
DG Act	<i>Dangerous Goods Act 1985</i>
DoU	Declaration of Use
EP Act	<i>Environment Protection Act 2017, as amended by the Environment Protection Act 2018</i>
EPA	Environment Protection Authority
EPA Inquiry	The Ministerial Advisory Committee (MAC) Inquiry into the EPA
ERS	Environment Reference Standard
EU	European Union
GED	General environmental duty
GHG	Greenhouse gases
IRG	Industry Reference Group
MAC	The Ministerial Advisory Committee, appointed to undertake an independent Inquiry into the Environment Protection Authority (EPA)
MAV	Municipal Association of Victoria
MoU	Memorandum of Understanding
NAPL	Non-aqueous phase liquids
NEPM	National Environment Protection Measures

Acronym	Full name
NEPM AAQ	<i>National Environment Protection (Ambient Air Quality) Measure</i>
NEPM ASC	<i>National Environment Protection (Assessment of Site Contamination) Measure</i>
NPI	National Pollutant Inventory
NPI NEPM	<i>National Pollutant Inventory (National Environment Protection) Measure</i>
OHS Regulations	Occupational Health and Safety Regulations 2017
OWMS	On-site wastewater management systems
PEM	<i>Protocol for Environmental Management: Minimum control requirements for stationary sources</i>
PFAS	Per- and polyfluoroalkyl substances
PFAS NEMP	PFAS National Environmental Management Plan
RIS	Regulatory Impact Statement
SEPP	State Environment Protection Policy
SEPP (AAQ)	<i>State Environment Protection Policy (Ambient Air Quality) Measure</i>
SEPP (AQM)	<i>State Environment Protection Policy (Air Quality Management)</i>
SEPP N-2	<i>State Environment Protection Policy (Control of Noise from Public Premises) N-2</i>
SEPP (PMCL)	<i>State Environment Protection Policy (Prevention and Management of Contamination of Land)</i>
VCAT	Victorian Civil and Administrative Tribunal
VPPs	Victoria Planning Provisions
WASS	Waste acid sulfate soils
WDC document	<i>Waste Disposal Categories – Characteristics and Thresholds</i>
WMP	Waste Management Policy

List of document short titles

Acronym	Full name
ESMP data manual	<i>ESMP data manual 1992: Engine speed at maximum power and noise test engine speeds for vehicles 1970 to 2005, Environment Protection Authority (2020)</i>
Noise Protocol	<i>Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues, Environment Protection Authority (2020)</i>
Waste classification protocol	<i>Waste Classification Assessment Protocol, Environment Protection Authority (2020)</i>
WDC document	<i>Waste Disposal Categories – Characteristics and Thresholds, Environment Protection Authority (2020)</i>

7.5 Appendix E — Glossary of terms

Term	Definition
Annual returns	A report on on-site wastewater management systems (OWMS) permits issued, systems disconnected, inspected and used within a municipality.
Background level	Background level of waste or substances (i.e. contaminants) describes the level of chemical or physical agents that are normally found in the environment. It is the concentration of a substance in land, ground or surface water that occurs naturally, or is not the result of human activities. The new EP Act defines background level of a waste or substance as the level set out in, or determined in accordance with the proposed final Regulations or ERS, or if not specified the naturally occurring concentration.
Compliance code	Compliance codes provide practical advice to a person who is conducting an activity subject to environment protection duties or obligations. While not mandatory, a person who follows a compliance code will — to the extent that it relates to their duties or obligations — be regarded as compliant with those duties or obligations.
Declaration of Use	An instrument under the proposed final Regulations to support safe storage, reuse and recovery of material derived from different types of lower-risk wastes. It involves a self-assessment for the duty holder to complete, which will describe the waste, assess its risks and identify legitimate use.
Designation	An instrument under the proposed final Regulations that enables EPA to issue a designation to clarify the classification of a waste (for example, as Category A, B, C or D) or to address the mixing, blending or diluting of waste. The designation clarifies the requirements that apply to the transport, receipt and disposal of the waste. This was known under the existing regulations as a 'classification'.
Determination	There are two types of determinations under the new EP Act and proposed final Regulations: <ul style="list-style-type: none"> • An instrument under Section 48 of the new EP Act that specifies requirements for a person to follow as an alternative to being required to hold a permission. • An instrument under regulation 5 of the proposed final Regulations that enables EPA to provide further technical detail to clarify: <ul style="list-style-type: none"> – when the duty to notify of contaminated land applies – whether a person is exempt from a permission requirement, or – whether a site is authorised to receive particular types of industrial waste.
Duty holder	Any person or organisation that has a duty under the new EP Act. Examples of duty holders include employers, contractors, company officers, other persons who manage or control an activity, persons who manage or control land, designers, manufacturers, suppliers or installers of plant or equipment, and community members whose activities create a risk of harm.

Term	Definition
E-waste	<p>Any waste item that uses a plug, battery or power cord. For example, televisions, mobile phones and computers.</p> <p>Defined in the proposed final Regulations as 'Waste in the form of electrical or electronic equipment, devices or things (or materials or parts of such equipment, devices or things), the operation of which is dependent on, or designed for the generation, transfer or measurement of, an electric current or electromagnetic field'.</p>
Environment Improvement Plan	<p>A tool that helps organisations manage the environmental impact of their activities. They are normally developed in consultation with nearby or affected communities, either as a statutory requirement under the <i>Environment Protection Act 1970</i> or voluntarily as part of good business practice.³⁸</p>
Fill material	<p>Soil that is safe for direct application to land. Contamination levels do not exceed the minimum Category D thresholds specified in the <i>Waste Disposal Categories – Characteristics and Thresholds</i> document.</p> <p>Defined in the proposed final Regulations as 'industrial waste that is soil with contaminant and leachable concentrations not exceeding the upper limits for fill material waste contaminant or leachable concentrations specified in the WDC document'</p>
Groundwater attenuation zone	<p>Defined in SEPP (Waters) as the part of an aquifer that surrounds a source of migration contaminant and is determined by EPA as an attenuation zone.</p>
Hazardous waste	<p>Defined in the existing environment protection framework as the hazardous by-product of everyday goods and services, such as manufacturing of motor vehicles, paint and plastics, dry cleaning services, fast food outlets, dental surgeries and hospitals.³⁹</p>
Industrial waste	<p>All waste arising from commercial, industrial or trade activities or from laboratories. It also includes household waste once it is gathered at a waste facility. The proposed final Regulations can also prescribe certain wastes to be industrial waste.</p>
Lawful place	<p>A place which is lawfully authorised to receive industrial waste. A lawful place will usually require an EPA permission or a DoU.</p>
Load-based licensing system	<p>A licensing scheme where licence fees are linked to the level of pollutants emitted by the licensee.</p>
Mixing zone	<p>An area where wastewater is discharged into and physically mixes with the receiving water. For the purposes of an EPA permission, it is an area with explicitly defined boundaries within which permission conditions may allow the environmental quality of the mixing water to be lower than the environmental quality that may be required beyond the mixing zone boundaries.</p>

³⁸ <https://ref.epa.vic.gov.au/our-work/licences-and-approvals/environment-improvement-plans>

³⁹ <https://ref.epa.vic.gov.au/your-environment/waste/hazardous-waste-management-in-victoria>

Term	Definition
Municipal waste	Defined in the new EP Act as waste arising from municipal or residential activities, and includes waste collected by, or on behalf of, a council. It does not include industrial waste.
Permission	<p>Approvals issued under the EP Act 1970 to undertake certain activities. There are several permission types under the new EP Act:</p> <ul style="list-style-type: none"> a. a development licence b. an operating licence c. a pilot project licence d. a permit e. a registration. <p>Schedule 1 of the proposed final Regulations lists which activities require a permission and what level of permission is required.</p>
Priority waste	Any waste, including municipal and industrial waste, which requires additional controls due to its higher level of hazard, potential to be mismanaged or to encourage resource recovery or efficiency.
Reportable priority waste	Waste types with the highest levels of risk. A subset of priority waste which requires the highest level of controls, including transportation only by permitted vehicles and mandatory reporting to EPA each time the waste is exchanged.
Site Management Order	A tool under the new EP Act which establishes long-term controls to ensure the ongoing management of sites that would otherwise pose ongoing risks of harm to human health and the environment. It allows more effective regulation of the risks associated with sites such as closed landfills and contaminated environments and will be registered on the title of the land. ⁴⁰
Trade waste	Defined in the <i>Water Act 1989</i> as any waterborne waste (other than sewage) which is suitable, according to the criteria of a water corporation or Catchment Management Authority, for discharge into their sewerage system. In addition, under the <i>Water Act 1989</i> further regulation or by-laws may be made which can declare other matter as trade waste.
Waste code	A code applied to waste types under the new EP Act for the purpose of identification and management. For example, the waste code for cyanides is A100.

⁴⁰ https://www.environment.vic.gov.au/_data/assets/pdf_file/0019/334450/Factsheet_Environment-Protection-Amendment-Act-2018.pdf

