



Regulating onsite wastewater management systems: local government toolkit

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

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



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Contents

Disclaimer	4
About this toolkit.....	4
How the environment protection laws have changed	4
Using this toolkit	5
On-site wastewater management systems	5
Potential risks to human health and the environment.....	5
Priority waste.....	6
Part A: Permit for constructing, installing or altering OWMS.....	7
What the law says	7
Transitional provisions for existing permits and new applications.....	7
Altering OWMS	7
Administering permits for OWMS.....	7
Permit applications.....	7
Permit fees.....	9
Permit expiry.....	9
Approving OWMS for use	9
Permit requirements.....	10
Enforcing permit laws.....	12
Part B: Operation and maintenance of OWMS	13
What the law says	13
Enforcing the operation and maintenance laws.....	16
Regulatory approach to OWMS maintenance and operation	18
Investigating OWMS maintenance and operations issues.....	19
Part C: Regulating OWMS under the general environment duty.....	32
Delegation to councils and appointment of council authorised officers.....	32
Powers of council authorised officers.....	32
General environmental duty.....	33
Compliance and enforcement tools for council authorised officers.....	35
Appendix 1: OWMS permits.....	38
Appendix 2: Permit fees.....	45
Appendix 3: Investigation flowchart	46
Appendix 4: Notice ordering maintenance	47
Appendix 5: Infringement notices.....	49
Appendix 6: Prosecution.....	51
Appendix 7: Council authorised officer powers.....	52
Appendix 8: Notices under the Act.....	58

Disclaimer

The information in this publication is for general guidance only. It does not constitute legal or other professional advice and should not be relied on as a statement of the law. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice for your specific circumstances.

EPA has made every reasonable effort to provide current and accurate information, but it does not make any guarantees regarding the accuracy, currency or completeness of that information.

This toolkit draft was written prior to the proposed Environment Protection Regulations (the Regulations) being made – see [subordinate legislation tools \(https://www.epa.vic.gov.au/about-epa/laws/new-laws/subordinate-legislation\)](https://www.epa.vic.gov.au/about-epa/laws/new-laws/subordinate-legislation). Therefore, care should be taken when reading this toolkit, as the final form of the Regulations may be different to the previous Regulations draft that this was based on.

About this toolkit

Environment Protection Authority Victoria (EPA) has developed this toolkit to support local government (council) officers in Victoria to understand and enforce the laws under the *Environment Protection Act 2017* (the Act) and the proposed *Environment Protection Regulations 2021* (the Regulations). This toolkit sets out the new laws for on-site wastewater management systems (OWMS) with a daily design or actual flow rate of sewage capacity of 5000 litres (L) or less that councils can enforce.

The toolkit also provides practical tips and advice on how to investigate complaints and issues relating to OWMS, using the Act's risk-based compliance framework.

How the environment protection laws have changed

The general environmental duty (GED) is at the centre of the new Act and it applies to all Victorians. The GED requires any person engaging in an activity that may cause risk of harm to human health or the environment from pollution or waste to minimise these risks. This is so far as reasonably practicable (<https://www.epa.vic.gov.au/about-epa/laws/new-laws/what-is-reasonably-practicable>).

The GED applies to people who own or use an OWMS and, within this, how the system is constructed, installed, altered, operated and maintained. It also applies to how faults and system failures are dealt with and waste is managed. This allows for a broader, more prevention-based approach to the risks and impacts associated with OWMS.

Councils have an important and long-standing role in regulating the construction, installation, alteration and use of OWMS. This role continues under the new environmental protection laws, with councils having additional powers and tools.

The new laws continue the requirement for a permit from council to construct, install or alter an OWMS. They also have new requirements for the operation and maintenance of OWMS for owners and occupiers of the land on which its located (owners and occupiers). Penalties apply for non-compliance, which councils can enforce.

A delegation of functions and powers from EPA to councils also allows for councils to take action under the GED.

Using this toolkit

Part A explains the permit for construction, installation or alteration of an OWMS and approval of use.

Part B explains the laws requiring proper operation and maintenance of OWMS, including the duties of owners and occupiers, and how council can enforce maintenance.

Part C explains how councils can regulate OWMS under the GED, through a delegation of powers from EPA.

Use this toolkit with:

- *Environment Protection Act 2017* – see legislation.vic.gov.au/
- Final proposed Environment Protection Regulations – see the EPA website <https://www.epa.vic.gov.au/about-epa/laws/new-laws/subordinate-legislation>
- [*Code of practice – onsite wastewater management*](#) (EPA publication 891.4) (currently under review).

On-site wastewater management systems

On-site wastewater management systems, including septic tank systems, are used on residential, community and business premises. They treat and then recycle or dispose of:

- greywater – from showers, baths, hand basins, washing machines, laundry troughs and kitchens
- blackwater – toilet waste from water-flush, incineration or dry composting systems
- sewage – a combination of greywater and blackwater.

The Regulations includes the following definitions:

- **on-site wastewater management system** means an on-site wastewater treatment plant with a design or actual flow rate of sewage not exceeding 5000 litres on any day and includes all beds, sewers, drains, pipes, fittings, appliances and land used in connection with the treatment plant.
- **on-site wastewater treatment plant** means a treatment plant for the bacterial, biological, chemical or physical treatment of sewage generated on site. For example, a septic tank system, a wet or dry composting toilet, aerobic treatment and sand filter.

Potential risks to human health and the environment

OWMS have the potential for major environmental and human health risks. Poorly installed or maintained systems, particularly old legacy systems, can create serious hazards. These might include polluted drinking water, contaminated land and water bodies, and offensive odours. Owners and occupiers have a responsibility to minimise these risks, so far as reasonably practicable. Read more about OWMS and wastewater on the EPA website

<https://www.epa.vic.gov.au/for-community/environmental-information/water/about-wastewater/onsite-wastewater-regulatory-framework>).

Priority waste

Sewage from a septic tank system is considered a 'priority waste' under the Act and Regulations. This means it has the potential to pose a higher risk to the environment. If priority waste is disposed of illegally or improperly, such as releasing it into our creeks or forests, there can be major environmental consequences.

Owners and occupiers have important obligations to make sure septic tank waste is appropriately managed and does not overflow. When septic tanks are pumped out, all reasonable steps must be taken to make sure whoever is transporting the waste takes it to an appropriate facility. Read more about reportable priority waste on the EPA website <https://www.epa.vic.gov.au/for-business/new-laws-and-your-business/manage-waste/reportable-priority-waste>).

Part A: Permit for constructing, installing or altering OWMS

What the law says

A permit from council is required to **construct, install or alter an OWMS with a design or actual flow rate of sewage not exceeding 5000 L on any day.**



The laws relating to permits are set out in Parts 4.2 and 4.3 of the Act and Parts 3.1, 3.3 and Schedule 1 of the Regulations.

Transitional provisions for existing permits and new applications

A permit to construct, install or alter a septic tank system, issued by a council under section 53M of the *Environment Protection Act 1970* (the 1970 Act), is equivalent to a permit to construct, install or alter an OWMS under the Act (section 470) and the Regulations (219(2)).

A permit application made under the 1970 Act, which is still in progress at the time the new laws commence (old application), is treated as a *new application* for the equivalent permit under the Act, (section 474(1)-(3)) and the Regulations (220(1)).

The new application will be assessed under the new Act. When assessing an application, a council must give the applicant a reasonable opportunity to provide any further information which they may require to make an informed decision. This comes under Regulation 220(2).

Altering OWMS

Altering an OWMS needs a permit from council. The Regulations define that to alter an OWMS means any change to:

- the design or construction of the system,
- the operation of the system, or
- the place or premises in or on which the system is located, which may increase the hydraulic flow or organic load of the system.

An alteration does **not** include general maintenance of the system. Examples of maintenance activities are included in [Table 2](#) under Regulation 159(2).

Administering permits for OWMS

Regulation 25 sets out that constructing, installing or altering an OWMS is an activity that needs a permit administered by the local municipal district council. Therefore, OWMS permit applications must be sent to the relevant local council, not EPA.

Permit applications

The Regulations sets out the form and manner of a permit application and the information that must be included in it. The Regulations also set out the matters that must be taken into account by council when deciding whether to issue a permit, and the statutory timeframes that apply. Both the Act and the Regulations set out the circumstances in which a permit must be refused.

Read more in [Appendix 1: OWMS Permits](#).

Figure 1 below shows the general process for administering permits.

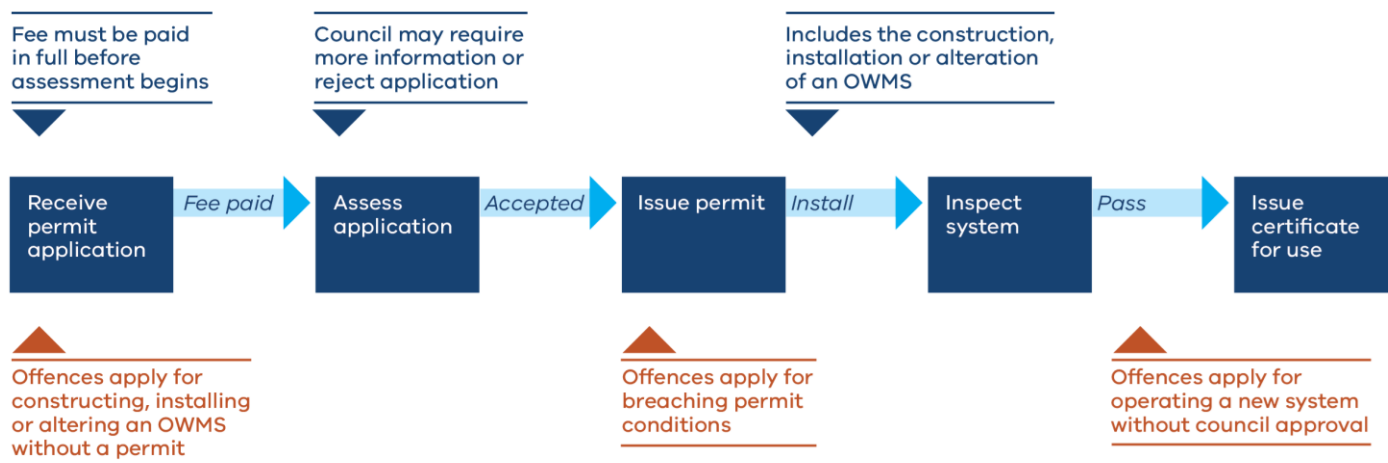


Figure 1: Permit process

Permit fees

The fees that councils can charge relating to OWMS permit applications are listed in the Regulations – refer to [Appendix 2: Prescribed fees for permits](#).

Councils may:

- retain fees – see section 439(1) of the Act
- reduce, waive or refund fees if the council is satisfied it is reasonable to do so – see Regulation 215(2)
- suspend or revoke an OWMS permit, if the holder of the permit hasn't paid any prescribed fee for the permit – see section 60(1)(d) and 61(1)(d) of the Act. Other grounds for suspending or revoking permits are listed in [Appendix 1: OWMS Permits](#).

Permit expiry

OWMS permits can be issued for a maximum of 5 years, with the option to renew before it expires.

Permits aren't an ongoing compliance tool. A permit is only required until the OWMS work is complete and council approves the system for use.

Approving OWMS for use

On completion of construction, installation or alteration of an OWMS, the council who issued the permit must inspect the system. If council is satisfied the system complies with the permit, they must issue a certificate approving the use of the system. For example, a council may be satisfied that the system complies with the permit if they can see that it adheres to the manufacturer's manual, supplied by the person managing or controlling the system.

Approving alteration of an OWMS: Council must inspect OWMS that have been altered and confirm all permit conditions have been met before issuing a certificate for use of the altered system. However, unlike for construction or installation of new systems, it is **not** an offence to use an OWMS while it is undergoing alteration (see Table 1).

Permit requirements

Table 1 lists OWMS permit requirements under the Act and Regulations. There are serious offences for constructing, installing or altering an OWMS in circumstances:

- without a required council permit
- in breach of a condition of a permit
- operating a new system without council approval.

Table 1: Requirements relating to OWMS permits

Act section or Regulation	Requirement*	Maximum court penalties in penalty units	Infringement penalties in penalty units	Infringement code
Section 46(1)	A person must not engage in a prescribed permit activity except as authorised by a permit in respect of the activity.	1000 (natural person)	N/A	N/A
		5000 (body corporate)		
Section 63(2)	A person must not breach a condition of a permit issued to the person.	1000 (natural person)	N/A	N/A
		5000 (body corporate)		
Section 64 (a)-(c)	A person must not breach, in a permit issued or granted to the person, any condition prescribed in any of the circumstances listed in sections 64(a)-(c).	120 (natural person)	10 (natural person)	0341
		600 (body corporate)	50 (body corporate)	0342
Regulation 16(3)	Activities that require a permit are listed in Schedule 1 of the Regulations. Schedule 1 includes constructing, installing or altering an OWMS with a			

Act section or Regulation	Requirement*	Maximum court penalties in penalty units	Infringement penalties in penalty units	Infringement code
	design or actual flow rate of sewage not exceeding 5000 L on any day.			
Regulation 33	On completion of construction, installation or alteration of an OWMS in accordance with a permit, the council that issued the permit must inspect the system and must issue a certificate approving the use of the system if the Council is satisfied that the system complies with the permit.			
Regulation 34(1)	The holder of a permit for a relevant activity related to an OWMS must ensure that the system specified in the permit is not used until council has approved it in accordance with Regulation 33.	20 (natural person)	6 (natural person)	0245
		100 (body corporate)	30 (body corporate)	0246
Regulations 34(2)	Sub-regulation (1) does not apply to the holder of a permit that specifies the alteration of an OWMS.			

*Read the full Act sections and Regulations:

- *Environment Protection Act 2017* – see legislation.vic.gov.au/
- Final proposed Environment Protection Regulations – see epa.vic.gov.au/about-epa/laws/new-laws/subordinate-legislation

Enforcing permit laws

A **council or person appointed by a council** may initiate court proceedings for alleged offences against OWMS permit provisions listed under Regulation 171 (see Table 1).

A person appointed by council may also issue an infringement notice (fine) for permit-related infringement offences listed under Regulation 171.

An **authorised officer** appointed by council under section 242(2) of the Act ([delegated powers from EPA](#)) may also issue an infringement notice for alleged breach of a prescribed permit condition under section 64 of the Act.

The enforcement action taken must be proportionate to the nature of the offence – see [Table 3: Compliance and enforcement tools for OWMS](#).



Part B: Operation and maintenance of OWMS

What the law says

Part 5.7 of the Regulations, 'On-site wastewater management systems', outlines the obligations on various people to minimise risks, including those in management and control of an OWMS. These obligations include:



- maintaining the system in good working order
- ensuring those operating the system have the information they need
- responding to any failures.

These obligations under the Regulations apply to **all systems**, including older systems that didn't have a permit when they were installed. People may still operate old legacy systems, but they must take all reasonable steps to ensure the OWMS is maintained in good working order.

The Regulations ensure OWMS are operated and maintained in a way that minimises risks to human health and the environment.

Some Regulations apply to landowners and occupiers, including tenants. Others do not apply to 'renters', within the meaning of the *Residential Tenancies Act 1997*, and some only apply to landowners.

Table 2 lists these requirements, the associated penalties for non-compliance, and action councils may take to order maintenance of OWMS.

In addition to the requirements under the Regulations, the GED will require a person in management or control of an OWMS, including a legacy system, to take all reasonably practicable steps to ensure the system is operated so as not to pose a risk to human health or the environment. Action councils can take under the GED is explained in [Part C](#).

Table 2: Requirements for operation and maintenance of OWMS

Regulation	Requirement*	Maximum court penalties in penalty units	Infringement penalties in penalty units	Infringement code
A person in management or control of land on which an OWMS is located (for example an owner or occupier) must:				
159(1)	<p>Take all reasonable steps to ensure the OWMS is operated so it does not to pose a risk to human health or environment.</p> <p>For example, ensuring the OWMS is not overloaded to an extent that causes a blockage, runoff, spillage or leak.</p>	10 (natural person)	N/A	N/A
		50 (body corporate)		
159(2)	<p>Take all reasonable steps to ensure the OWMS is maintained in good working order.</p> <p>Examples of maintenance activities include:</p> <ul style="list-style-type: none"> regular desludging to remove the contents of the system ensuring the integrity of pipes, tanks and storage systems repairing and when required replacing components and fittings of the system, maintaining the biological and chemical processes integral to the proper functioning of the system maintaining the integrity of the land used in connection with the system to ensure access to the system is not impeded complying with the system manufacturer's specifications and recommendations (if provided) complying with any relevant council requirements; monitoring the system for signs of failure. <p>This requirement does not apply to a renter of a residence, (within the meaning of the <i>Residential Tenancies Act 1997</i>.)</p>	10 (natural person)	N/A	N/A
		50 (body corporate)		

	the OWMS (for example an occupier) regarding the correct operation and maintenance of the system. For example, where the property is leased, landowners need to provide information to occupiers or renters on how to correctly operate the system.			
		50 (body corporate)	10 (body corporate)	0334
162(1)	Keep and hold all records of maintenance activities carried out on the system, including any pump-out and service records, for five years after each activity.	5 (natural person)	1 (natural person)	0335
		25 (body corporate)	5 (body corporate)	0336
162(2)	If the council requests it, make any records of maintenance activities kept under sub-regulation (1) available for inspection.	5 (natural person)	1 (natural person)	0337
		25 (body corporate)	5 (body corporate)	0338
Council may order maintenance				
163(1)-(3)	<p>Where the council in whose municipal district the OWMS is located, or an authorised officer of the council has either:</p> <ul style="list-style-type: none"> received a notification under Regulation 161(2), or has a reasonable belief that an OWMS poses, or may pose, a risk to human health or the environment, or is not, or maybe not, in good working order; <p>then, if a council authorised officer has:</p> <ul style="list-style-type: none"> entered and inspected the place or premises where the OWMS is located, exercising their powers under Part 9.3 of the Act, and formed the reasonable belief that the system poses a risk to human health or the environment or is not in good working order; <p>the council authorised officer may give written notice to the owner to undertake the maintenance activities specified in the notice.</p>			
The landowner must:				
163(4)	Comply with council notice requiring maintenance.	10 penalty units for a natural person.	2 penalty units for a natural person.	0339
		50 penalty units for a body corporate.	10 penalty units for a body corporate.	0340

*Read the proposed final Environment Protection Regulations – see [EPA website \(https://www.epa.vic.gov.au/about-epa/laws/new-laws/subordinate-legislation\)](https://www.epa.vic.gov.au/about-epa/laws/new-laws/subordinate-legislation).

Enforcing the operation and maintenance laws

The laws related to operation and maintenance of OWMS, listed in Table 2, may be enforced by councils.

Court proceedings and infringements

A council or person appointed by a council may initiate court proceedings for offences against the provisions of the Act or Regulations listed under Regulation 171, relating to OWMS located in their municipal district.

The Act also empowers a person appointed by council to issue infringement notices for any infringement offences listed under Regulation 171.



Requesting records of maintenance

Council may request records of maintenance activities undertaken on an OWMS from the landowner under Regulation 162(2). This information can provide important evidence for an investigation into an alleged OWMS operation and maintenance issue.

Investigating and issuing a notice ordering maintenance

Only council employees appointed as authorised officers under section 242(2) of the Act (through delegation of powers from EPA to councils), may issue a notice ordering maintenance of an OWMS. This is in the circumstances set out in Regulation 163.

Council authorised officers may enter and inspect a place or premises where an OWMS is located, to investigate a possible risk posed by an OWMS as described in Regulation 163. Using their powers of entry and inspection under Part 9.3 of the Act, where they reasonably believe the system poses a risk to human health or the environment or is not in good working order, the council authorised officer may give a written notice to the owner of the place or premises. The owner must then carry out the maintenance activities specified in the notice. [Appendix 4](#) provides further details about the notice ordering maintenance.



Refer to [Part C](#) for more information about the role and powers of council authorised officers, including other notices they are empowered to issue under the Act.

Council investigation under different Acts

Council officers are often appointed under multiple Acts, so it is crucial to understand when you can investigate and enforce the *Environment Protection Act 2017* (the Act) and Regulations.

Only council employees appointed as authorised officers under s242(2) of the Act or persons appointed by council or prescribed persons under Regulation 171 can take specified action under the Act and Regulations.

Appointment under the Local Government Act 2020 or Public Health and Wellbeing Act 2008 does not provide council officers with powers to investigate and enforce the laws under the Environment Protection Act and Regulations.

Scenario: Odour from residential premises

Situation

A council officer is investigating an issue under another Act, for example, an odour from a property under the nuisance laws of the *Public Health and Wellbeing Act 2008*.

The officer suspects the problem may be caused by poor maintenance of an OWMS. Being familiar with the laws related to OWMS under the Environment Protection Regulations, they suspect that an offence under these Regulations has occurred. If this is the situation, they think a notice ordering maintenance (Regulation 163) may be the most effective approach to fixing the problem.

The law

If the council officer is also appointed as an authorised officer under section 242(2) of the *Environment Protection Act 2017*, they can take action. However, they must make it clear to the landowner or occupier what powers they are using. This can be done by:

- showing their ID card that lists their appointments and explaining to the owner or occupier which laws they believe have been breached, and what action they now intend to take; or
- by exiting the property, and then reentering. This time informing the landowner or occupier that they are now investigating under the Environment Protection Act and Regulations.

Regulatory approach to OWMS maintenance and operation

EPA recommends taking an escalating approach to compliance and enforcement action. This approach aims to:

- stop the unlawful activity and remedy any harm caused by the non-compliance
- raise awareness of the law and consequences of non-compliance
- punish offenders where appropriate.

Along with your council's own regulatory approach and processes, in determining the appropriate enforcement response, consider the following.

Nature and seriousness of the non-compliance

This includes:

- the extent to which controls are failing to meet the expected standard of management for a given risk
- the impact of either withholding or providing false information about environmental risk.

Risk of harm from the non-compliance

Consider the actual or potential impacts on human health (including psychological health) or the environment (including amenity).

Attitude, behaviour, and actions of the person (or persons) in management or control of the OWMS

Consider, specifically, whether the person has:

- proactively identified risks and implemented controls to minimise those risks
- sought out and referred to industry, council and EPA guidance when they are unsure of how to manage risk
- notified council as soon as they are aware of an incident, as required by Regulation 161 (taking effect 1 July 2022)
- fully complied with any notices and promptly advised council of any issues that impeded compliance.

Other relevant factors

Consider other factors that may be relevant, for example:

- public interest
- the deterrent impact of enforcement – how much the use of enforcement action will deter the specific offender from re-offending, as well as other people from committing similar offences
- council's strategic priorities for compliance and enforcement action.

Investigating OWMS maintenance and operations issues

Councils may receive notifications, reports, or complaints about alleged OWMS operation or maintenance concerns in various ways. For example:

- a notification from a person in management or control of an OWMS, that the system is not in good working order, or poses a risk to human health or the environment. Examples under the Regulations of when the system poses a risk include (but are not limited to):
 - the absorption field of the system becomes sodden with wastewater pooling on the surface of the surrounding land
 - there is wastewater runoff from the disposal area
 - an odour of effluent emanating from or near the system
 - the grease trap of the system is full or blocked.

This notification is a legal requirement under Regulation 161 from 1 July 2022.

- reports from a person who has noticed an offensive odour or pooling of wastewater that they suspect is coming from their neighbour's OWMS
- reports about wastewater run-off
- issues identified through a strategic campaign run by council to educate the community about their obligations to properly maintain and operate OWMS.

Process for investigating issues

When an alleged issue with the maintenance or operation of an OWMS comes to the attention of council, these stages should be followed:

- **Stage 1:** Initial investigation to understand all the relevant circumstances of the alleged issue
- **Stage 2:** Site inspection to assess the environmental and human health impacts
- **Stage 3:** Use of compliance and enforcement tools in response to non-compliance.

Considerations

Consider the following when investigating an alleged OWMS maintenance or operation issue:

- Compliance and enforcement actions can only be taken by council or people appointed by council who have specific powers under the Act or Regulations. Refer to [‘Enforcing the operation and maintenance laws’](#).
- There is no single approach, as every situation is different, and the unique facts and circumstances of every matter must be investigated and assessed. The nature of the problem and the attitude of the person managing or controlling the system will inform your actions. For example, the length of investigations and level of effort you make to educate a person, to bring them into compliance, should be considered before you think about taking formal compliance and enforcement action.
- OWMS issues may also constitute a breach of the *Public Health and Wellbeing Act 2008*, where councils also have powers to act. Identify the appropriate alleged offence and course of action, whether it’s using the Environment Protection Act, the Regulations or other Acts.
- Use the guidance in this section, along with [Appendix 3: Investigation flowchart](#), and your council’s investigation procedures.

Stage 1: Initial investigation

Perform an initial investigation to understand the problem.

<p>Purpose</p>	<ul style="list-style-type: none"> • understand the nature of the issue, such as its likely cause, impact, seriousness of risk to human health and the environment • understand the people involved, such as the attitude, behaviour and actions of the relevant duty holder, any attempts to resolve the issue and the sensitivities of any people impacted • consider the possible range of appropriate responses to start with, including providing information and guidance, direct compliance responses and speaking to affected people.
<p>Approaches</p>	<ul style="list-style-type: none"> • discuss the issue and share information about the operation and maintenance of OWMS, its impacts and the law, with the person in management or control of the system • obtain information from the reporter if it's applicable • request records of maintenance activities from the landowner under Regulation 162 • respond within a reasonable time and move to action where possible • show sensitivity to affected people and consider the impacts on their health • acknowledge where a person in management or control of the OWMS has notified council of the issue, or where they were unaware of the problem • explain the scope of the law and compliance pathways.
<p>Questions to ask yourself</p>	<p>Review the notes you have about the incident:</p> <ul style="list-style-type: none"> • is there enough information about the issue? • is there a known cause? <p>Notifications to council:</p> <ul style="list-style-type: none"> • has the person in management or control of the system reported issues with their OWMS to council before? • will a site visit be required to assess the OWMS? <p>Reports/complaints:</p> <ul style="list-style-type: none"> • has the person affected reported OWMS issues to council before? • will I need to meet the reporter on-site, for example, if their property is being affected, or at other land or water body? • will I need to contact the person in management or control of the system suspected of causing the issue?

	<p>Council powers:</p> <ul style="list-style-type: none"> do I have the power to take the enforcement action I am considering?
Decision	<p>You'll need to use your discretion to determine the appropriate response to take, for example, considering the range of educative, compliance and enforcement options. In many cases, you'll have enough information to provide direct advice to the person in management or control of managing or controlling the system.</p> <p>In some cases, you may consider the issue serious enough to investigate further, understanding the final decision may be issuing an official warning or infringement notice or ordering maintenance work.</p> <p>You may reasonably believe that a breach of the general environmental duty has occurred and issuing an improvement notice or prohibition notice is the most appropriate action to take – see Part C for more information on council authorised officer powers.</p> <p>Follow your existing investigation and interview procedures.</p> <p>To support your approach, refer to the following information and considerations for communicating with people affected by OWMS and owners and occupiers.</p>

Communicating with people who report an OWMS issue

Alleged non-compliance with the Act or Regulations may be discovered due to reports from the community to councils of offensive smells or wastewater being discharged from an OWMS, and the owner or occupier may not have reported it.



How you communicate with the person affected by the OWMS issue can be as important as fixing the problem. Build trust with the person who's reported the issue by acknowledging their frustration. They may have suffered from the issue for some time.

Be open in your communication. Explain the role of council in regulating OWMS and the outcomes they can expect.

Communicating with owners and land occupiers with OWMS issues

If you are investigating an issue that the owner or occupier has notified you about, as is their duty under Regulation 161, remember that they have done the right thing in bringing it to council's attention. Work constructively with the person to identify the issue, and what they need to do to fix it.

Even if the issue has been reported by someone else, always be courteous. The person may not be aware of the alleged issue, and possible impact on their local community or environment. If the person doesn't answer the door when you visit, leave a card for a callback.

In all situations start by identifying yourself and show your ID if asked. Explain the relevant obligations under the law to properly maintain and operate an OWMS. Also, that overloading a system or discharging wastewater inappropriately may impact other people or the environment. Always maintain the standard of conduct expected of your professional role.

If a person is known to be aggressive, discuss the situation with your manager and consider requesting assistance from the police.

Be sure to act within the scope of your powers. If you do decide that further enforcement action is warranted, having taken into account the requirements in the *Infringements Act 2006*, explain what action you intend to take. If appropriate, educate and inform people in management or control of OWMS by providing [guidance documents](#).

Contemporaneous notes

It's crucial to take contemporaneous notes. These are notes you take during your investigation about all your observations, including details of what you saw, heard and any conversations. Take notes as you observe actions occurring, or as soon as practicable after.

Always keep these original notes, which you may be required to produce for any related criminal proceedings. These notes become both an official record and important evidence, to support any enforcement action.

Your notes may be needed to:

- complete a report, statement or affidavit, all of which can be used as evidence
- provide details that support enforcement action, such as issuing infringements and other notices
- refresh your memory while giving oral evidence in relevant court proceedings (with the leave of the court), if you are unable to rely solely on your memory to answer questions.

Stage 2: Site assessment

The information provided through an OWMS notification under Regulation 161, or by a person making a report or complaint, forms part of the evidence available to council to assess the alleged OWMS operation or maintenance issue. There may be enough information for you to talk to the person in management or control and potentially resolve the matter.

However, if you believe a site assessment is required or if there’s an ongoing issue, do an inspection before taking further action.

<p>Purpose</p>	<ul style="list-style-type: none"> • investigate if there is an issue with the operation or maintenance of an OWMS • consider if there may have been an alleged breach of the Act or Regulations, for example by the person in management or control of the system, or landowner • resolve the issue by discussing with the person in management or control, or landowner • if you can’t resolve through discussion, decide whether you consider that enforcement action under the Act or Regulations is appropriate, such as issuing an infringement notice or official warning, a notice to order maintenance or an improvement or prohibition notice – see Stage 3: Tools to address non-compliance.
<p>Approaches</p>	<ul style="list-style-type: none"> • know your powers under the Act and Regulations: <ul style="list-style-type: none"> ○ unless appointed an authorised officer under section 242(2) of the Act, council officers have no power to enter and inspect a place or premises to investigate OWMS under the Act or Regulations and may therefore only enter with the consent of the relevant occupier ○ there are limitations on entry into residential premises for council authorised officers. See Powers of entry of authorised officers • speak with the person in management or control of the system. • assess the system in person if possible. • plan your visit to maximise your chances of making a valid assessment and consider the timing, recurrence and nature of the issue • follow your councils’ existing investigation and interview procedures • avoid lengthy investigations, use lower-level interventions where appropriate • consider the level of impact from the system to the environmental and human health

	<ul style="list-style-type: none"> • use approaches that reflect the attitude of the person who manages or controls the system and what its impact is on the environment or neighbours • where appropriate, enable people to resolve issues.
<p>Questions to ask yourself</p>	<ul style="list-style-type: none"> • Do I have power under the Act to enter the place or premises without the consent of the owner or occupier? • Is there a time of day that's best to do a site inspection, based on the use of the system? • Is the system being maintained regularly? Do I need to request records of maintenance under Regulation 162(2)? • Have I investigated and considered the attitude, behaviour and actions of the person in management or control of the system? • Do I have sufficient evidence from my investigation to make a discretionary decision about what the appropriate action to take is (for example whether compliance or enforcement action is warranted)? • Under the law, who is the relevant duty holder (for example would I be taking action against the landowner, person operating the system, such as a tenant, or other)? • Have I used a power of entry and inspection? If so, an entry report must be given to the occupier or apparent occupier under section 254 of the Act. See Council authorised officer powers.
<p>Decision</p>	<p>Use the following information, 'Assessing the risks and impacts of OWMS' and 'Assessing against duties under the Regulations' and in Part C 'Assessing compliance with the GED', to help you consider if an alleged offence may have occurred and whether an intervention, including enforcement action, may be warranted.</p>

Assessing the risks and impacts of OWMS

Regulation 159 requires any person in management or control of land on which an OWMS is located (referred to throughout as owners and occupiers) to take reasonable steps to ensure an OWMS is operated so it doesn't pose risks to human health and the environment. You can check for signs of blockage, runoff, spillage or leak which may indicate that the system is being overloaded.

Owners and occupiers must also take reasonable steps to ensure that an OWMS is maintained in good working order. You can request maintenance records that can inform whether the system is being regularly desludged or pumped-out and what, if any, repairs have been undertaken, or components and fittings replaced. You can look for signs of system failure and the integrity of land used in connection with the system, and check compliance with any council requirements. Maintenance requirements do not apply to a renter of the residence (within the meaning of the *Residential Tenancies Act 1997*).

Regulation 159(3) is specific to septic tanks and requires that septic tank systems must not overflow.

The risks and impacts of OWMS may also be assessed under the general environmental duty (GED) – refer to [Part C](#) of this toolkit.

Assessing against duties under the Regulations

Where you have identified an issue with the operation or maintenance of an OWMS (an alleged breach of Regulation 159) and the person in management or control did not notify council of the problem, they may be in breach of Regulation 161. Assess whether it is reasonable to expect that the person would have been aware, or reasonably should have been aware, of the issue. Also, assess whether there are obvious signs of system failure such as blockage, strong odour, runoff or pooling on the surface of surrounding land, or a lack of maintenance, where a system is not regularly desludged or pumped out. Regulation 161 applies from 1 July 2022.

If there is a problem with an OWMS being operated by the occupier of a premises, rather than the landowner, you should find out whether the person was provided with information about the proper operation of the system. If they weren't, the landowner may have breached Regulation 160, which requires the landowner to provide information to the occupier on the correct operation and maintenance of the system.

In your interactions with a landowner, if you request to see records of maintenance for the system, and the landowner either doesn't have them or refuses to provide them to you for inspection, they may be in breach of Regulation 162. Records of maintenance are important evidence of whether the landowner has taken reasonable steps to keep the system in good working order, as required under Regulation 159.

Stage 3: Tools to address non-compliance

Once you have investigated the matter to a level that you sufficiently understand the unique facts and circumstances of the alleged issue, use your discretion to determine the appropriate and proportionate action to take. It's crucial to understand the enforcement tools available to councils, so you can provide appropriate and proportionate responses to each OWMS issue.

Purpose	<ul style="list-style-type: none"> • remedy the issue, to the greatest extent possible • enable relevant people in management or control to resolve issues • make a discretionary decision about whether enforcement action is warranted in the circumstances.
Compliance and enforcement tools	<ul style="list-style-type: none"> • provide information and education, including explaining the possible enforcement outcomes for non-compliance • request records of maintenance activities under Regulation 162(2) • issue a notice ordering maintenance for a longer-term remedy of the problem (Regulation 163) • issue an improvement notice or prohibition notice under the Act if you reasonably believe there has been a relevant breach of the Act or Regulations (including alleged breach of the general environmental duty) • issue an infringement notice for allegedly: allowing a septic tank system to overflow (Regulation 159(3)), failing to provide information to the occupier (Regulation 160), failing to keep maintenance records (Regulation 162(1)), failing to make them available to council on request (Regulation 162(2), or non-compliance with a notice ordering maintenance (Regulation 163(4)) • prosecute through the Magistrates Court. <p>More information about compliance and enforcement tools for OWMS are included in the Appendix section of this toolkit.</p>
Approaches	<ul style="list-style-type: none"> • choose your approach based on the seriousness of the issue • be fair and consider the power imbalances between individuals • use approaches that have considered the attitude of the person in management or control of the system and the impacts on human health and the environment.
Questions to ask yourself	<ul style="list-style-type: none"> • Do I have sufficient evidence to support a compliance or enforcement response? • What's the most appropriate response, assessing all the unique facts and circumstances of the matter, including the attitude or behaviour of the person in management or control?

	<ul style="list-style-type: none"> • What tool or approach, or combination of approaches will provide an enduring remedy? • Do I have powers to take this action?
Decision	<p>Make sure that you make a proportionate decision. Tools and approaches vary from advisory through to regulatory interventions.</p> <p>Figure 2 demonstrates responsive regulation, helping officers to use an approach that considers the behaviour of those allegedly causing the non-compliance.</p> <p>Table 6 will help you to choose the appropriate intervention for the situation.</p>

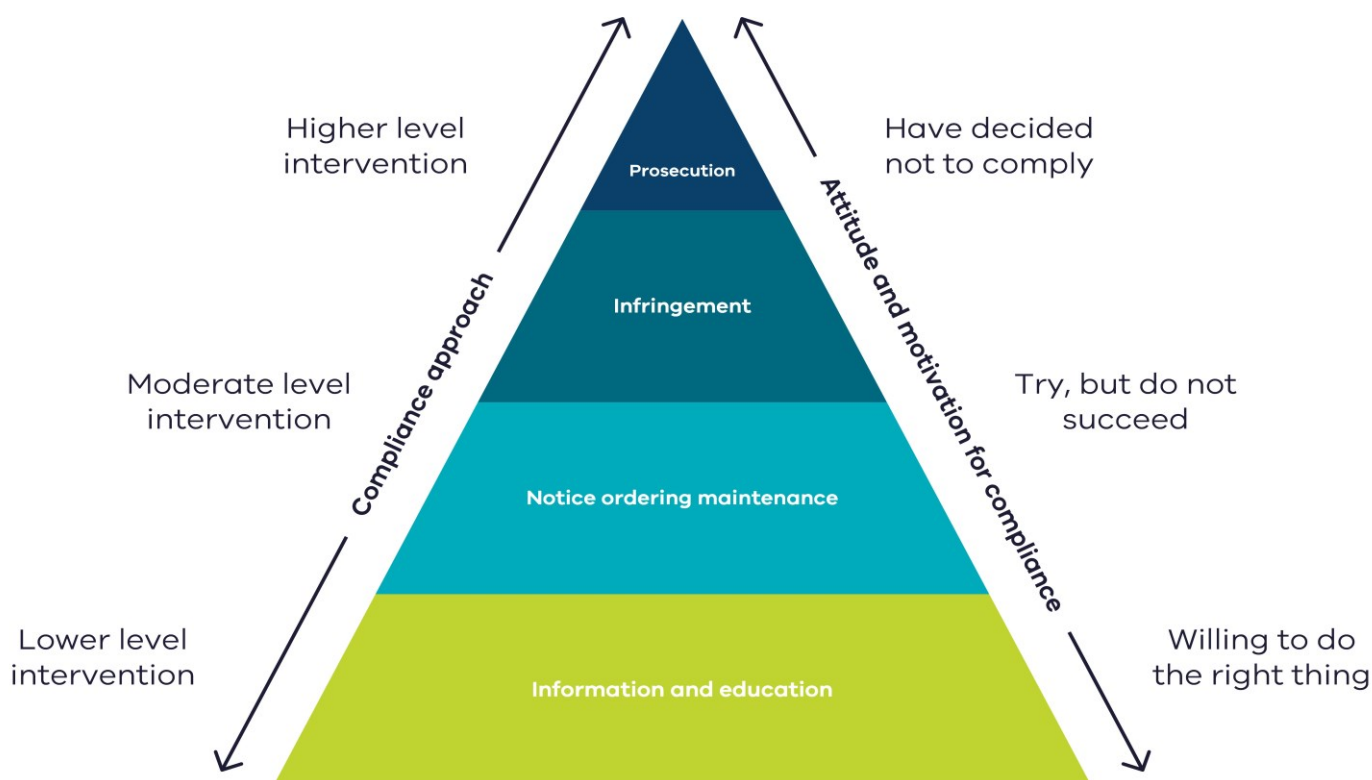


Figure 2: Compliance and enforcement approach for OWMS

Choosing a compliance and enforcement approach

When considering your OWMS compliance and enforcement options, you can refer to the following Table 3 which sets out the compliance and enforcement tools and examples of when to use them.

Your approach to interventions should be dynamic, taking into account all the relevant facts and circumstances unique to the matter, including the behaviour of the person in management or control of the system, and the possible environmental and human health risks. For example, although you might routinely start with providing the person responsible with information and

guidance, an enforcement response such as issuing an infringement notice or official warning may be a more appropriate response. This is where the person responsible is alleged to have an established pattern of deliberate breaches of the Act or Regulations.

Table 3 can help you to assess and determine the appropriate and proportionate compliance and enforcement tool(s) for the situation.

Table 3: Compliance and enforcement tools for OWMS

Level	Type of intervention	Suitable situations	Unsuitable situations	Other considerations
Lower level	Information and education	Where the relevant individual was unaware of overflowing wastewater from their OWMS and the impact on the health of people in the neighbourhood, and the local environment is low.	Repeat offenders and deliberate or known operation issues.	Level of harm to people in the area and the environment.
Moderate level	Request records of maintenance – Regulation 162(2)	Where there are problems with the operation of the OWMS that need to be fixed. If the system hasn't been maintained, then the problem may be more obvious.	Circumstances where there is evidence of ongoing or repeated non-compliance and records of maintenance have already been sought in the past.	Owners of land with OWMS must make records of maintenance available upon request by council.
	Notice ordering maintenance – Regulation 163	Where there are problems with the operation of the OWMS that need to be fixed, but there is evidence of regret and a desire to rectify the situation.	Circumstances where there is evidence of ongoing or repeated non-compliance and the notice is unlikely to be effective. Or where the OWMS is being maintained but the problems relate to the design	A notice ordering maintenance may only be issued by a council authorised officer appointed under section 242(2) of the Act. A notice ordering maintenance may be issued alongside an

			<p>of the system (particularly older or legacy systems). In this case council authorised officers can consider issuing an improvement or prohibition notice under the delegation from EPA.</p>	<p>infringement notice or official warning, if appropriate.</p>
	<p>Infringement notices</p>	<ul style="list-style-type: none"> • Where a person has allegedly breached a prescribed permit condition. • Where a person has allegedly operated a newly constructed or installed OWMS without council approval of use. • Where guidance or previous notices to order maintenance have been ignored, or where the impact of overflowing wastewater from the OWMS is high. 	<p>One-off, accidental or low impact.</p>	<p>This generally shouldn't be the first enforcement tool, but it might be, depending on the attitude of the person in management or control of the system, or the level of harm.</p> <p>In the case of operating a new OWMS without council approval, it's reasonable to assume they were aware of this requirement as council should have provided this information when a permit was granted.</p> <p>Also consider issuing an official warning rather than an infringement notice. Under section 8 of the Infringements Act, any issuing officer may serve an official warning rather than an infringement notice, if they consider in all the facts and</p>

				circumstances it is appropriate to do so.
Higher level	Prosecution (Magistrates Court proceedings)	<ul style="list-style-type: none"> • Alleged ongoing or repeat non-compliance with the Act or Regulations, where the impact is high and notices have not been complied with. • Where an infringement notice has been ineffective in getting the person to fix the problem. • The accused has elected to have the matter referred directly to the Magistrates' Court for determination. 	<p>One-off, accidental or low impact.</p> <p>Where a notice to order maintenance or infringement has worked to get the person to fix the problem.</p>	<p>Prosecution may be initiated alongside other interventions such as a notice to order maintenance.</p>

Part C: Regulating OWMS under the general environment duty

Part C of this toolkit explains how councils can regulate risks and impacts from OWMS under Victoria's key preventative environmental law – the general environmental duty (GED), see [EPA website \(https://www.epa.vic.gov.au/about-epa/laws/new-laws/a-better-environment\)](https://www.epa.vic.gov.au/about-epa/laws/new-laws/a-better-environment).

Regulating OWMS under the GED allows councils to focus their regulatory effort on preventing problems caused by poorly maintained or operated OWMS. Councils can then respond to community concerns about the impacts from OWMS, based on the risks posed and how effectively those risks are being managed.

Delegation to councils and appointment of council authorised officers

EPA delegates additional powers and functions under the Act to councils, enabling them to use the GED to regulate the risks and impacts from OWMS.

The delegation enables councils to appoint their employees as authorised officers under section 242(2) of the Act, for the purposes of the powers and functions delegated.

Powers of council authorised officers

Council authorised officers may exercise a limited set of powers, enabling them to investigate and issue certain notices to intervene in OWMS issues. These notices include improvement and prohibition notices under the Act, and notices ordering maintenance under Regulation 163.

Council authorised officers also have legal obligations under the Act such as announcing their entry and identifying themselves to the occupier, or apparent occupier.

Council authorised officers must also provide a written report to the occupier, or apparent occupier, where a power of entry and inspection has been exercised. The report must be given when they leave or as soon as practicable after. The report can be given directly to the occupier, mailed or emailed.

See [Appendix 6](#) that lists the powers of council authorised officers, including limitations that apply under the delegation from EPA.

Powers of entry

Council authorised officers have powers of entry under sections 246-248 of the Act.

Section 248 limits entry to **residential premises**, except:

- with the consent of the occupier
- if the authorised officer reasonably believes that a person has contravened, is contravening or is about to contravene a provision of the Act or Regulations; or
- if the authorised officer reasonably believes there is an immediate risk of material harm to human health or the environment.

If one of the last two points applies, the AO can only investigate the part of the residential premises necessary to determine the suspected contravention (s248(2)). For example, this may only require the authorised officer to enter the land surrounding a house to inspect the system.

General environmental duty

The Act introduces a duty focused on prevention, called the general environmental duty (GED). This duty requires anyone conducting an activity that may pose risks of harm to human health or the environment from pollution and waste, to minimise those risks.



Guidance and good industry practices provide the expected performance standards for managing and minimising risks.

Section 25 General environmental duty

(1) A person who is engaged in an activity that may give rise to risk of harm to human health or the environment from pollution or waste must minimise those risks, so far as reasonably practicable.

Read section 25 of the Act in its entirety at [legislation.vic.gov.au](https://www.legislation.vic.gov.au)

Read more:

- [General environmental duty](https://www.epa.vic.gov.au/for-business/new-laws-and-your-business/general-environmental-duty) (<https://www.epa.vic.gov.au/for-business/new-laws-and-your-business/general-environmental-duty>) on the EPA website
- [Reasonably practicable](https://www.epa.vic.gov.au/about-epa/publications/1856) (EPA publication 1856) (<https://www.epa.vic.gov.au/about-epa/publications/1856>)

How the general environmental duty applies to OWMS

The GED broadly covers OWMS issues and so it can be used by councils alongside the Regulations. It applies to anyone who owns or uses an OWMS. It also applies to how someone constructs, installs, alters, operates, and maintains the system, deals with faults or system failures, and manages their waste.

The GED requires the person in management or control of an OWMS, including an older system, to take all reasonably practicable steps to make sure the system doesn't pose a risk to human health or the environment.

A council authorised officer can issue an improvement or prohibition notice if they reasonably believe the GED has been breached in relation to an OWMS. For example, if an older system discharges untreated wastewater off-site and into a stormwater drainage system, a council authorised officer may decide to issue an improvement notice under section 271, using breach of the GED as the grounds for issuing the notice. Leaving the system operating as it is, may cause land and water contamination issues that can also impact human health and the environment. Refer to [Compliance and enforcement tools for council authorised officers](#).

Investigating OWMS issues under the GED

When investigating an OWMS issue as an alleged breach of the GED, council authorised officers will follow the same general regulatory approach provided in Part B.

However, while the principles and general investigation steps will be the same, there are some key differences with how OWMS risks and impacts are assessed under the GED.

Assessing compliance under the GED

The GED duty may be breached whenever there is a risk of harm not being proportionally managed. It doesn't matter whether there's been an actual impact on people or the environment, or not.

Assess OWMS issues under the GED by determining how well an individual or business:

- understands how their OWMS activities may create risks of harm to people or the environment
- has put in place reasonably practicable adjustments to eliminate or reduce risks of harm from their OWMS.

Assess if the owner or occupier is using and maintaining:

- the OWMS in a way that minimises risks, for example, by installing and maintaining it to the manufacturer's specifications
- processes for identifying, assessing and controlling risks
- adequate systems to make sure if harm eventuates the effects are minimised.

Have they provided information, instruction, supervision and training to people engaged in activities to make sure they comply with the above?

Use EPA guidance to help you decide if an owner or occupier is in breach of the GED, such as the [Code of practice – On-site wastewater management](#) (EPA publication 891.4) (currently undergoing review - <https://www.epa.vic.gov.au/about-epa/publications/891-4>).

Summary of what to consider when assessing

In summary, look at whether good industry standards have been adopted, rather than just focusing on the level and impact of the harm from the OWMS.

Your assessment should consider the:

- **Individual and/or business**
 - how well do they understand how to operate the system, to minimise any risk it may pose so far as reasonably practicable (including maintaining the system in good working order)? How do you know?
 - what systems for identifying, assessing and controlling risks would you expect to be in place? How does that compare to other individuals or businesses undertaking similar OWMS activities?
- **Risks and controls** – what's in place? How effective are those controls? How well are users of the system informed and competent in implementing these controls?
- **Evidence** – what kinds of evidence would you look for that could indicate how risks are being managed?
- **Unmanaged risks** – what additional [reasonably practicable](#) (<https://www.epa.vic.gov.au/about-epa/publications/1856>) controls would you recommend?
- **Communication** – how do you work with the individual or business to understand their risks and controls?

Compliance and enforcement tools for council authorised officers

While councils cannot commence proceedings for an alleged breach of the GED, council authorised officers appointed under Section 242(2) of the Act, may issue improvement notices or prohibition notices to bring owners and occupiers with OWMS into compliance with the GED.

EPA takes an escalating approach to compliance and enforcement. Figure 3 provides examples of how councils can consider applying this approach to OWMS.

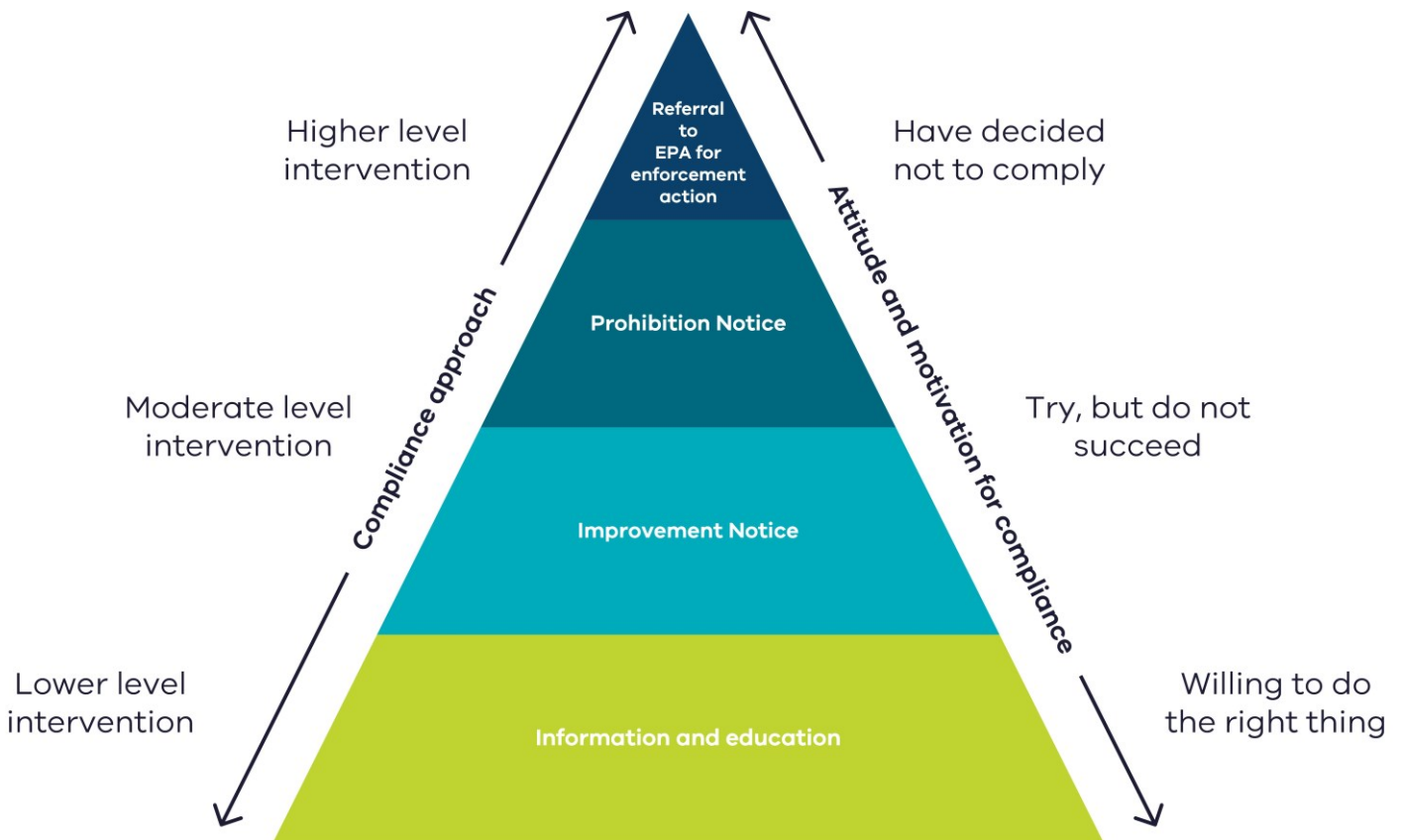


Figure 3: Compliance and enforcement approach to OWMS issues under GED

Information and education

Council authorised officers should provide **EPA guidance** to owners and occupiers so they can voluntarily comply with the GED when carrying out OWMS activities. When an owner or occupier is either unable or unwilling to voluntarily make changes to their activities, council authorised officers may issue an improvement notice or prohibition notice.

Notices under the Act

Council authorised officers may issue **improvement notices** (section 271 of the Act) and **prohibition notices** (section 272 of the Act), if they have a reasonable belief that any of the grounds listed in those sections are satisfied. One ground for issuing these notices includes an alleged contravention of the Act or Regulations, including an alleged breach of the GED.



Notices are a tool intended to bring a person back into compliance with the law, by setting out the steps they must take to do so. A notice may compel the recipient to comply with the actions outlined by the council authorised officer in the notice. Additionally, a notice ensures there's a transparent formal record of the required action to remedy a risk or prevent harm. Notices will also include a timeframe(s) to comply.

Table 4 provides examples of situations where a council authorised officer may consider issuing an improvement or prohibition notice. Detailed information about these notices is provided in [Appendix 8: Notices under the Act](#).

Table 4: Notices under the Act

Intervention	Suitable situations	Unsuitable situations	Other considerations
<ul style="list-style-type: none"> Improvement notice – Section 171 Prohibition notice – Sections 172 	<p>Where a notice ordering maintenance of OWMS (Regulation 163) may not be appropriate. For example, where the OWMS is operating the way it was designed to, and being adequately maintained, but that may nonetheless give rise to risks to human health and the environment and, therefore, potentially breach the GED. For example, the OWMS may have originally been designed to overflow, which may cause land and water contamination issues that can also impact human health.</p>	<p>Where a notice ordering maintenance (Regulation 163) can be issued to fix the problem.</p> <p>Circumstances where there is evidence of sustained or repeated non-compliance and a notice is unlikely to be effective.</p>	<p>Improvement and prohibition notices can only be issued by a council authorised officer appointed under section 242(2) of the Act.</p>

EPA enforcement

Where a council authorised officer has detected alleged non-compliance with an improvement notice or prohibition notice that they have issued, they may refer the alleged offence(s) to EPA for consideration of further enforcement action.

Only EPA may commence proceedings for alleged non-compliance with improvement or prohibition notices. For example, EPA may commence court proceedings for alleged breaches of the substantive requirements in a notice.

Review of improvement notices and prohibition notices

A person who has received an improvement notice or prohibition notice has the right to apply to EPA for a review of the notice under section 429 of the Act.

Review of an improvement notice, or prohibition notice, can only be performed by EPA (even if a council AO issued the notice).

Notice recipients can apply to EPA for a review by calling 1300 372 842 (1300 EPA VIC).

If council receives review applications by mistake, email them to EPA immediately at internalreviews@epa.vic.gov.au.

Appendix 1: OWMS permits

<p>Who administers permits for OWMS?</p>	<p>Councils administer permits for constructing, installing or altering an OWMS located in their municipal district – Regulation 25.</p>
<p>What is required in the application?</p>	<p>Section 50 of the Act states that a permit application made to the council must:</p> <ul style="list-style-type: none"> • be made in the prescribed manner and form • be accompanied by the prescribed fee • specify that the application is for a permit • specify the activity in relation to the permit application; and • contain any prescribed information. <p>Council must not deal with the application if it does not comply with this section and must advise the applicant if this is the case.</p> <p>Regulation 26(1) and (2) sets out the form and manner of a permit application and the information that must be included within it.</p> <p>Form and manner - Regulation 26(1)</p> <ul style="list-style-type: none"> • details of the applicant (name, address (postal and email if any), telephone number) • address of the premises where the OWMS is/or planned to be located • the owner of the relevant premises • the name and contact details of the person undertaking any relevant plumbing works • the name and contact details of any person undertaking construction, installation or alteration of the OWMS. <p>Prescribed information - Regulation 26(2)</p> <ul style="list-style-type: none"> • detailed plans, specifications and particulars of the proposed construction, installation or alteration of the OWMS including a floor plan of the relevant premises • details of the proposed use of the OWMS • a copy of a certificate of conformity, issued by a body accredited under the Joint System of Australia and New Zealand (or any other accreditation body approved by the Authority) confirming that the proposed on-site wastewater treatment plant meets the appropriate standard – read more on the EPA website (https://www.epa.vic.gov.au/for-community/environmental-information/water/about-wastewater/onsite-wastewater-regulatory-framework); or a copy of an exemption granted by the Authority under section 459 of the Act (section 459 Exemption) stating that the applicant is exempted from the requirement to provide a certificate of conformity

	<ul style="list-style-type: none"> • description of the proposed method of treatment and management of the effluent resulting from the OWMS, and evidence confirming the OWMS is appropriate for the proposed use • land capability assessment (if required by council), prepared by a person council considers suitably qualified and to a standard acceptable to council. <p>Note: A section 459 Exemption may be granted to a permit applicant by EPA in highly exceptional circumstances that relate to innovative on-site wastewater treatment plants.</p> <p>Transfer, amend or renew an OWMS permit</p> <p>A permit may be transferred, amended or renewed (sections 56, 57 and 84 of the Act). For example, transfer may be necessary if a property associated with a permit is sold before the OWMS has been constructed, installed, or altered.</p> <p>Regulation 26(3)-(6) sets out the form and manner and information required in an application to transfer, amend or renew an OWMS permit.</p> <p>Additional information</p> <p>The required information must have an acceptable level of detail provided by the applicant. If council considers additional information necessary, they may require the applicant to provide it under section 50(3) of the Act.</p>
<p>How long does council have to decide on the permit?</p>	<p>Council must decide on permit applications for OWMS within 42 business days after receiving the permit application – Regulation 27(2).</p> <p>Statutory stop clock – if council has requested more information from the applicant, the Act allows the statutory clock to be stopped until the information is received (section 50(4)). This can also be through a joint agreement between the applicant and council.</p>
<p>What must council consider when deciding whether to issue the permit?</p>	<p>Council must take the following matters into account when deciding whether to issue a permit – Regulation 28(h):</p> <ul style="list-style-type: none"> • whether the site for the proposed construction, installation or alteration of the OWMS is environmentally sensitive or is otherwise unsuitable. Examples of environmentally sensitive sites may include freshwater lakes, sites in sandy areas with high water tables and sites in sensitive areas where the receiving waters may be at risk of algal blooms from high nutrient levels • whether the proposed construction, installation or alteration of the OWMS is unsuitable for the site or proposed use

	<ul style="list-style-type: none"> • whether the proposed use of the OWMS is inconsistent with the design specifications • whether the area available for the treatment or disposal of the effluent resulting from the system is not suitable or sufficient • the findings of any land capability assessment required under regulation 26(2)(e).
<p>When must council refuse a permit?</p>	<p>Under section 81(4)(c) of the Act, council must refuse to issue a permit if:</p> <ul style="list-style-type: none"> • council determines the permit applicant is not a fit and proper person to hold the permit; or • council considers that the activity specified in the permit application poses an unacceptable risk of harm to human health or the environment; or • any prescribed circumstances exist. <p>Regulation 29(4) prescribes that council must refuse a permit where the permit applicant has not provided the information required under Regulation 26(2)(c).</p> <p>The prescribed information required under Regulation 26(2)(c) is:</p> <ul style="list-style-type: none"> • copy of the certificate of conformity confirming that the proposed on-site wastewater treatment plant meets the appropriate standard, or a copy of an exemption (from this requirement) granted to a permit applicant by EPA under section 459. <p>Under Regulation 29(5), this doesn't apply to applications for alteration of an OWMS that was either:</p> <ul style="list-style-type: none"> • constructed or installed, or partially constructed or installed, before the Regulations commenced; or • constructed or installed with a permit issued under the <i>Environment Protection Act 1970</i> after the Regulations commenced.
<p>How long is the permit in force?</p>	<p>Council may set a timeframe of between 2 and 5 years for which the permit will be in force. The timeframe must be included as a condition in the permit – Regulation 30(d).</p> <p>If approval of use under Regulation 33 is granted before the timeframe set out in the permit conditions, the permit will cease on the date the approval of use is granted.</p>

<p>How do permit exemptions work?</p>	<p>Section 83 of the Act allows a person to apply to council for an exemption from a permit.</p> <p>An application for a permit exemption must:</p> <ul style="list-style-type: none"> • be made in the prescribed form and manner • specify the activity involved • be accompanied by the prescribed fee • include any prescribed information. <p>On receiving an application that includes all the required information, council must decide on the exemption within 10 business days. When determining the exemption, a council must take into account any prescribed matter.</p> <p>An exemption granted by council has no effect unless the applicable conditions are complied with.</p> <p>Prescribed form and manner – Regulation 32(1)</p> <ul style="list-style-type: none"> • name, address (postal and email, if any) and telephone number of the applicant • the address at which the activity specified in the application is to be engaged in if that address differs from the address required under paragraph (a) • the name and contact details of the owner of the premises at which the activity specified in the application is occurring. <p>Prescribed information – Regulation 32(2)</p> <ul style="list-style-type: none"> • detailed plans, specifications and particulars of the proposed construction, installation or alteration of the OWMS including the floor plan of the premises at which the activity specified in the application is to be engaged in • details of the proposed use of the OWMS • in relation to the construction or installation of an OWMS, either a copy of a certificate of conformity, issued by a body accredited under the Joint Accreditation System of Australia and New Zealand (or any other accreditation body approved by the Authority), confirming that the proposed on-site wastewater treatment plant meets the appropriate standard; or a copy of an exemption granted by the Authority under section 459 of the Act, stating that the applicant is exempted from the requirement to provide a certificate of conformity • a description of the proposed method of treatment and management of the effluent resulting from the OWMS and evidence confirming the system is appropriate for the proposed use
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	<ul style="list-style-type: none"> • if required by the council, a land capability assessment prepared by a suitably qualified person to a standard acceptable to the council. <p>Considerations for deciding a permit exemption</p> <p>Regulation 32(3) lists the prescribed matters that council must consider when deciding whether to grant an exemption. These matters are:</p> <ul style="list-style-type: none"> • whether the activity specified in the application may pose a serious risk of harm to human health or the environment • whether granting the exemption may adversely affect: <ul style="list-style-type: none"> ○ the interests of any person other than the applicant; or ○ any environmental values identified in any relevant environment reference standard. <p>Note: A section 459 Exemption may be granted to a permit applicant by the Authority in highly exceptional circumstances relating to innovative on-site wastewater treatment plants.</p>
<p>How does council approve use of an OWMS?</p>	<p>Once the OWMS is constructed, installed or altered, council must inspect the system.</p> <p>If council is satisfied the system complies with the permit, they must issue a certificate approving the use of the system. For example, a council may be satisfied that the system complies with the permit if they see that the system complies with any manufacturer's manual supplied to them by the person in management or control of the system – Regulation 33.</p>
<p>Are there consequences for non-compliance relating to OWMS permits?</p>	<p>The Act sets out offences for not obtaining a permit and not complying with permit requirements.</p> <p>The Regulations also prohibit the use of an OWMS following construction or installation, until council inspects and issues a certificate for use under Regulation 33 – Regulation 34. This offence does not apply to the holder of a permit that specifies the alteration of an OWMS.</p> <p>Penalties apply for breaching this Regulation and council may issue an infringement notice.</p>
<p>Can councils suspend or revoke a permit?</p>	<p>Reasons for suspending or revoking a permit</p> <p>The Act provides councils with the power to suspend or revoke a permit it has issued. This may temporarily or permanently remove the right of the permit holder to perform the associated activity.</p>

A permit may be suspended under section 60 or revoked under section 61 of the Act, for any of the following reasons:

- the council believes on reasonable grounds that the holder of the permit has contravened the Act or Regulations
- the council does not consider the permit holder to be a fit or proper person to engage in the permit activities
- the council believes the permit holder has given to Council, or that the permit was obtained or renewed because of, materially incorrect or misleading information
- the permit holder has not paid any prescribed fee in relation to the permit
- the council is satisfied with any prescribed matter.

Additionally, council can revoke a permit if it is satisfied that the permit holder no longer engages in the permit activity. Or if it considers that the permit holder is no longer required to hold the permit.

Written notice of proposed suspension or revocation

Council must give the permit holder written notice stating:

- the activities in relation to which the council proposes to suspend the permit
- the reasons for the proposed suspension or revocation of a permit
- That the permit holder may, within 10 business days, make submissions to the council in relation to the proposed suspension or revocation.

Council must consider any submission before deciding whether or not to suspend or revoke a permit.

Decision to suspend or revoke a permit

As soon as practical after making a decision to suspend or revoke a permit, council must give the permit holder written notice stating:

- the decision and reasons for the decision
- the period of suspension, or the date the revocation takes effect
- that the permit holder may apply to VCAT for a review of the decision (except where the permit is no longer required).

Extension of suspension

Council can, by written notice, also extend the period of suspension, if on the date the suspension was to expire, council considers that

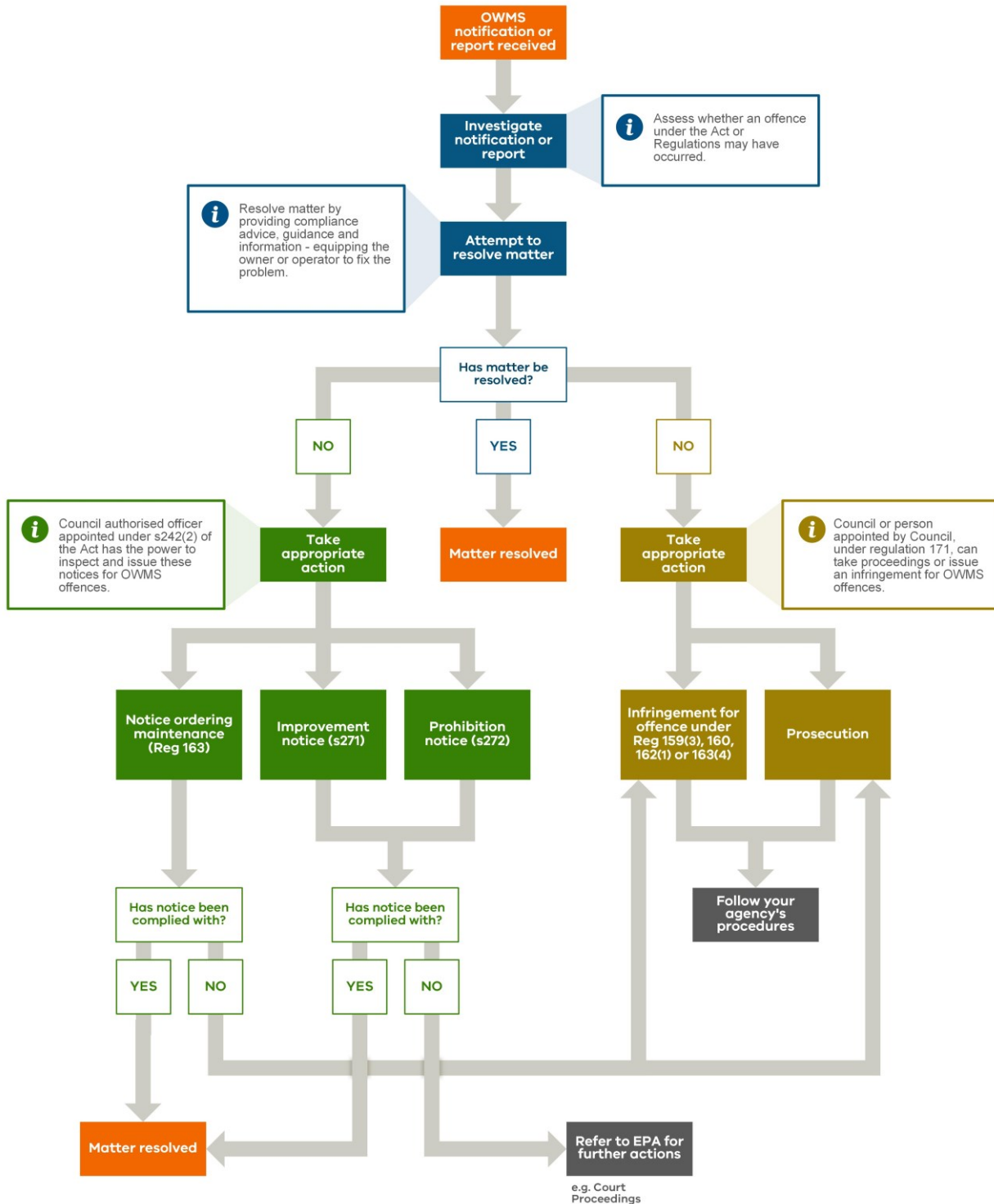
	the permit holder has not rectified any circumstances on which the council based its decision to suspend the permit. The permit holder can apply for a review of this decision by VCAT.
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Appendix 2: Permit fees

Application type	Fee design	Fee amount
Construct, install or alter OWMS – Regulation 196(1)(b),(2)	Variable application fee A variable permit application fee has been prescribed to account for the differences in Councils' cost base and the variety of systems for which a permit may be sought.	Minimum fee 48.88 fee units (for assessments not exceeding 8.2 hours) with an additional 6.12 fee units payable per hour of assessment (exceeding 8.2 hours) up to a maximum of 135.43 fee units.
Minor alteration to OWMS — Regulation 196(1)(a),(3) (Minor alteration means an alteration that consists only of the installation, replacement or relocation of the internal plumbing, fixtures or fittings of an OWMS)	Flat application fee A flat permit application fee has been prescribed for minor alterations to reflect that these applications are simpler, with lower variability in the amount of assessment time required.	37.25 fee units
Transfer a permit – Regulation 197	Flat application fee	9.93 fee units
Amend a permit – Regulation 198	Flat application fee	10.38 fee units
Renew a permit – Regulation 200	Flat application fee	8.31 fee units
Exemption – Regulation 199	Variable application fee A variable exemption application fee has been prescribed to account for the variability in the amount of assessment time required, as granting an exemption will turn on the specific circumstances relating to an application.	Minimum fee will be 14.67 fee units (for assessments not exceeding 2.6 hours) with an additional 5.94 fee units payable per hour (or part of an hour) of assessment (exceeding 2.6 hours) up to a maximum of 61.41 fee units.

Appendix 3: Investigation flowchart

Investigating OWMS under the Environment Protection Act 2017 and Regulations



Appendix 4: Notice ordering maintenance

What is it?	Regulation 163 allows councils to require maintenance activities of an OWMS by issuing a written notice.
On what grounds can the notice be issued?	<p>A notice ordering maintenance of an OWMS can be given to the landowner, where a council or council authorised officer has either:</p> <ul style="list-style-type: none"> • received notification under Regulation 161(2); or • has a reasonable belief that an OWMS located in their municipal district poses, or may pose, a risk to human health or the environment, or is not, or may not be, in good working order. <p>Also, a council authorised officer has inspected the system and formed a reasonable belief of the above.</p>
Who can issue this notice?	This notice can only be issued by a council authorised officer appointed under section 242(2) of the Act, who has inspected the system using their powers under Part 9.3 of the Act and formed a relevant reasonable belief about the issue.
Who can it be issued to?	A notice ordering maintenance can be given to the landowner of the place or premises where the OWMS is located.
What does the notice require a person to do?	<p>The notice can require maintenance actions on the OWMS. For example, desludging or pumping out, if there is an overflow of the system, or to repair or replace components or fittings of a faulty system.</p> <p>Under Regulation 161(2), where a person in management or control of land on which an OWMS is located notifies the council of the problem, they are also required to notify steps taken or which they propose to take to fix the problem. These steps can also be included in the notice.</p> <p>The grounds for the notice and required maintenance actions must be set out in the notice.</p>
What information must the notice include?	<p>Regulation 163(3) specifies that the notice must include:</p> <ul style="list-style-type: none"> • the name and address of the person to whom the notice is issued • the location of the on-site wastewater management system • the grounds on which the notice is issued • maintenance actions that the person must take to comply with the notice • the period within which the person must comply with the notice • the penalty for failing to comply with the notice. <p>Use the notice template provided by EPA.</p>

How long does the person have to comply?	The council authorised officer will specify the timeframe for which the person must comply. This timeframe must be included in the notice.
How can notices be issued?	Notices under the Act can be issued by: <ul style="list-style-type: none">• email• in person• postal mail• by leaving it at the usual or last known residential address (with a person apparently at least 16 years old). Refer to section 344 of the Act – Service of documents.
Are there consequences if a person fails to comply with the notice?	It is an offence not to comply with a notice ordering maintenance– Regulation 163(4).

Appendix 5: Infringement notices

<p>What is an infringement notice?</p>	<p>An infringement notice is a notice served for an alleged offence against the law (an 'infringement offence'), in accordance with the requirements under the <i>Infringements Act 2006</i>. An infringement notice may impose a financial amount (the 'infringement penalty'), the payment of which may otherwise expiate an alleged offence.</p> <p>This allows certain offences (known as 'infringement offences') to be dealt with through payment of the infringement penalty, rather than through court proceedings (the recipient of an infringement notice however may elect to have the alleged offence referred to be heard and determined in Court). The value of the infringement penalty is expressed in 'penalty units'.</p> <p>Official warnings</p> <p>Under section 8 of the Infringements Act, any issuing officer may serve an official warning rather than an infringement notice, if they consider in all the facts and circumstances it is appropriate to do so.</p>
<p>Who can issue infringements for OWMS related offences?</p>	<p>A person appointed by council may issue infringement notices for the infringement offences listed in Regulation 171. This power comes from section 307(1) and (4), and section 347(3) and (5) of the Act.</p> <p>A council authorised officer appointed under section 242(2) of the Act may issue an infringement for alleged breach of section 64 of the Act (breach of a prescribed permit condition).</p>
<p>What OWMS offences are infringement offences?</p>	<p>The offences under the Act and Regulations that have an infringement penalty associated with them are listed in Schedule 10 to the Regulations.</p>
<p>Who may receive an infringement notice?</p>	<p>With regards to OWMS permits, infringement notices may be served on a permit holder for an alleged breach section 64 of the Act or Regulation 34.</p> <p>For offences related to operation and maintenance of OWMS, infringement notices may be served on a person in management or control of the OWMS (the landowner or the occupier) for breach of Regulation 159(3); or the landowner for breach of Regulations 160, 161(1), 161(2) or 163(4).</p>

<p>How are infringement notices issued?</p>	<p>Councils follow their own processes for serving infringement notices. EPA does not need to approve the infringement notice format used however it must comply with the requirements in the <i>Infringements Act 2006</i> and associated Regulations.</p> <p>Notices under the Act may be served by email, postal mail, leaving it at the usual or last known address, or in person. Refer to section 344, Service of documents.</p>
<p>How can an infringement be disputed?</p>	<p>Under the <i>Infringements Act 2006</i>, recipients of an infringement notice may apply to have their infringement reviewed by the enforcement agency that issued it. Applications for a review must be made within 14 days of the applicant becoming aware of the infringement notice (section 64(c) of the <i>Infringements Act 2006</i>).</p>
<p>What happens if the person doesn't pay the infringement?</p>	<p>Councils have three options:</p> <ol style="list-style-type: none"> 1. Unpaid infringements may be referred to Fines Victoria who, for a fee, will pursue the recipient of the infringement to recoup the debt. 2. The infringement may be withdrawn, with the offence then pursued through the Magistrates Court. 3. Council may use a private debt collector to pursue the infringement amount.
<p>What are penalty units?</p>	<p>A penalty unit is a monetary amount that is fixed for a financial year by the Treasurer and adjusted annually in line with CPI - Department of Treasury and Finance website (https://www.dtf.vic.gov.au/home).</p> <p>Offences under the Act and Regulations list the maximum number of penalty units that can be imposed by a court. The infringement offences listed in Schedule 10 of the Regulations, list the applicable penalty units for the infringement offence.</p> <p>Penalty units for both natural persons and body corporates are listed. Penalty units for body corporates are five times higher.</p>

Appendix 6: Prosecution

<p>What is it?</p>	<p>A 'prosecution' is a criminal proceeding initiated in a court of relevant jurisdiction, against a person alleged to have committed an offence against the law.</p> <p>OWMS related offences under the Act and Regulations are generally summary offences, that have lower associated maximum penalties than indictable criminal offences. Summary offences are heard in a Magistrates' Court.</p> <p>Offences under the Act for the breach of the requirement to obtain a permit (section 46(1)), or breach of a permit condition (section 63(2)), and breach of an improvement or prohibition notice (sections 286 and 287) are Indictable offences. However, these offences may also be heard and determined summarily in a Magistrates' Court (see section 28 of the <i>Criminal Procedure Act 2009</i>).</p>
<p>Who may initiate court proceedings?</p>	<p>A person appointed by council may take proceedings for OWMS related offences listed under Regulation 171. This power comes from section 347(3) and (5) of the Act.</p> <p>Offences related to improvement and prohibition notices must be referred to EPA who may initiate court proceedings.</p>
<p>What's the timeframe for court proceedings?</p>	<p>Criminal proceedings for an alleged summary offence must be commenced (via filing and service of charges against the accused), within 12 months after the commission of the alleged offence. For further details see the <i>Criminal Procedure Act 2009</i>.</p>

Appendix 7: Council authorised officer powers

Note: In this table 'AO' means a council employee appointed by their council as an authorised officer under s242(2) of the Act.

Council AOs have a limited set of powers that can be used to investigate OWMS issues under the Act.

Act section	Authorised officer power	Description of authorised officer power that can be used to investigate OWMS
246	Authorised officer may enter and inspect any place or premises	<p>When can an AO enter and inspect?</p> <p>For the purpose of performing a function or duty, or exercising a power under the Act, an AO may enter and inspect a place or premises for the following purposes:</p> <ul style="list-style-type: none"> determining if a person has contravened the Act or Regulations monitoring compliance with the Act or Regulations determining if there is a risk of harm to human health or the environment from pollution, waste or contaminated land inspecting or testing equipment or a vehicle. <p>AOs may enter and inspect a place or premises at any reasonable time, including when open to the public.</p> <p>In circumstances where they believe there's an immediate risk of material harm to human health or the environment, they may enter at any other time.</p> <p>What is material harm?</p> <p>Section 5 of the Act defines <i>material harm, in relation to human health or the environment</i>, as harm that is caused by pollution or waste that:</p> <ul style="list-style-type: none"> involves an actual adverse effect on human health or the environment that's not negligible; or involves an actual adverse effect on an area of high conservation value or of special significance; or results in, or is likely to result in, costs in excess of \$10,000 (or a higher amount prescribed by the Regulations) being incurred in order to take appropriate action to prevent or minimise the harm
247	Entry and inspection of a place or premises when open to the public	

		<p>or to rehabilitate or restore the environment to the state it was in before the harm.</p> <p>Any one of the above may satisfy the definition of 'material harm'.</p>
248	Residential premises	<p>Restrictions on entry to residential premises</p> <p>AOs must not enter and inspect premises that are used only for residential purposes except:</p> <ul style="list-style-type: none"> • with the consent of the occupier for the time being of the premises; or • if the AO reasonably believes that a person has contravened, is contravening or is about to contravene, the Act or Regulations; or • if the AO reasonably believes there's an immediate risk of material harm to human health or the environment. <p>In the circumstances in the last two dot points above, an AO may only enter and inspect in a part of the premises that the council AO believes is necessary for the purposes of determining if:</p> <ul style="list-style-type: none"> • a person has contravened, is contravening or is about to contravene the Act or Regulations; or • if there is an immediate risk of material harm to human health or the environment. <p>Limitation on council AO powers (search warrant)</p> <p>Council AOs are limited from applying for a search warrant from a magistrate (section 261 of the Act). This limitation means that section 248(1)(b) does not apply to council AOs. This limitation is set out in a direction in respect to the delegation to councils.</p>
249	Announcement on entry	<p>Immediately on entering a place or premises, AOs must take all reasonable steps to notify the occupier or apparent occupier and show their identity card.</p> <p>The AO is not required to do this if it would unreasonably interfere with performing a function or duty or exercising a power under the Act or cause unreasonable delay, or if the person has been notified in advance.</p>

250	Person(s) assisting authorised officer	<p>An AO may request the assistance of any person for the purpose of entry and inspection. For example, another council officer, police officer or interpreter.</p> <p>The occupier of person in management or control must allow the person assisting the AO access.</p>
251 except 251(2)(h)	Powers on entry	<p>What can a council AO do during an inspection?</p> <p>An AO may do anything they reasonably believe is necessary to perform a function or duty or exercise a power under the Act. This may include (but is not limited to):</p> <ul style="list-style-type: none"> • inspecting, examining and making enquiries • take and remove samples of a substance or thing • carrying out testing and examination • taking photographic, audio, video or any other type of recording • examine, copy or take extracts from a document • inspect, examine or test any plant, equipment, vehicle or other thing • bring equipment or materials to the place or premises • request the assistance of any person at the place or premises • take any other action. <p>An AO may carry out or cause to be carried out, any testing or examination or a thing, including testing of a thing that results in the destruction of that thing.</p> <p>Council AOs must take all reasonable steps to minimise any disruption caused by their entry and not remain at the premises longer than reasonably necessary.</p> <p>Limitation on council AO powers (seizure)</p> <p>Council authorised officers are limited from using the power under section 251(2)(h) of the Act- that means they cannot seize and remove a thing connected with a suspected contravention. This limitation is set out in a direction in respect to the delegation to councils.</p>

<p>252 except s252(1)(c)</p>	<p>Authorised officer may require production of documents</p>	<p>During an inspection, a council AO may require documents necessary for the purpose of their investigation. They may also examine or make copies of documents.</p> <p>Limitation on council AO powers (retaining documents)</p> <p>Council authorised officers are limited from using the power under section 252(1)(c) of the Act- that means they cannot retain a document or part of a document. This limitation is set out in a direction in respect to the delegation to councils.</p>
<p>253</p>	<p>Authorised officer may require information or answers</p>	<p>An AO who enters a place of premises may require information or answers from a person at the place or premises for the purpose of performing a function or duty or exercising a power under the Act.</p> <p>An AO must only require information or answers if they reasonably believe that the person has knowledge of a matter or thing relevant to another person’s compliance with the Act or Regulations.</p> <p>Note that section 268 of the Act provides protection against self-incrimination with regards to powers under Part 9.3. This means that if providing information would incriminate the person, they may have a reasonable excuse not to provide the information. This excuse doesn’t apply to producing documents and only applies to individuals, not companies.</p>
<p>254</p>	<p>Report to be given about entry and inspection of place or premises</p>	<p>Entry report</p> <p>If a council AO has used their powers of entry and inspection, they must give the occupier or apparent occupier a written report about the entry to the premises, when they leave the premises, or as soon as possible after the AO leaves the place or premises.</p> <p>The report must be in writing and include:</p> <ul style="list-style-type: none"> • the time of the entry and departure • the purpose of the entry and inspection • a description of any actions taken at the place or premises • a summary of any observations of the AO at the place or premises • the procedure for contacting the AO for further details of the entry and inspection.

		Note: the report may be emailed, given in person, mailed or left at the usual or last known residential address (with a person apparently at least 16 years old) - section 344 of the Act - Service of documents.
259	Authorised officer may ask for a person's name and address	<p>An AO may ask a person to state their name and address if they reasonably believe the person has:</p> <ul style="list-style-type: none"> • committed, are committing or are about to commit an indictable offence against the Act; or • they think the person can help them with their investigation of an indictable offence. <p>The AO must inform the person of their reasonable beliefs. If the person is suspected of committing an offence, the AO must give the person sufficient information to understand the nature of the offence.</p> <p>For offences relating to OWMS, this power could only be used by council authorised officers investigating indictable offences including:</p> <ul style="list-style-type: none"> • failure to obtain a permit • breach of a permit condition • breach of the general environmental duty • breach of compliance with an improvement or prohibition notice issued by the council AO.
271	Improvement notice (issue)	<p>An AO may issue an improvement notice.</p> <p>Refer to Appendix 8.</p>
272	Prohibition notice (issue)	<p>An AO may issue a prohibition notice.</p> <p>Refer to Appendix 8.</p>
279	Amendment of notices	<p>An AO may amend an improvement notice or prohibition notice. This includes extending the period which the person has to comply with the notice or revoking or amending any requirement in the notice.</p> <p>Refer to Appendix 8.</p>

307 & 307(4)(f)	Serve an infringement notice for breach of a prescribed permission condition	An AO may serve an infringement notice on a person who they reasonably believe has committed an offence against section 64 of the Act (breach of a prescribed condition of an OWMS permit).
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Appendix 8: Notices under the Act

Improvement notice

What is it?	An improvement notice (section 271 of the Act) requires a person to take action to remedy a non-compliance with the Act and/or Regulations, including the GED, in relation to OWMS.
On what grounds may the notice be issued?	<p>An AO may issue a person with an improvement notice if the AO reasonably believes that the person:</p> <ul style="list-style-type: none"> • is contravening or has contravened the Act, Regulations or a subordinate instrument made under the Act; or • is not complying or has not complied with a permission (for example OWMS permit) granted under the Act; or • has engaged in or proposes to engage in an activity that has caused or is likely to cause harm to human health or the environment from pollution or waste. <p>The notice must state the grounds on which it is issued.</p>
Who may issue this notice?	This notice can be issued by an AO, including a council authorised officer, appointed under section 242(2) of the Act, in relation to OWMS.
Who may it be issued to?	In many cases, improvement notices will be issued to the person, meaning the natural person or body corporate/company, conducting the relevant activity.
What can the notice require a person to do?	Improvement notices may require a person to take any action that a council authorised officer reasonably considers necessary to address non-compliance with the Act or Regulations, or an activity that has caused, or is likely to cause harm.
What information must the notice include?	<p>Section 271(4) requires that an improvement notice must:</p> <ul style="list-style-type: none"> • specify the name and address of the person to whom it is issued • state the grounds on which the notice is issued • specify the actions that the person must take to comply with the notice • specify the period within which the person must comply with the notice • set out the penalty for failing to comply with the notice, and • specify how the person may seek review of the decision to issue the notice. <p>Use the template provided by EPA.</p>

<p>How may notices be served?</p>	<p>Notices under the Act can be issued by:</p> <ul style="list-style-type: none"> • email • in person • postal mail • by leaving it at the usual or last known residential address (with a person apparently at least 16 years old). <p>For more information refer to section 344 of the Act - Service of documents.</p>
<p>How long does the person have to comply?</p>	<p>The period-of-time by which the person must comply with the notice must be stated in the notice. The council authorised officer preparing the notice will specify a reasonable length of time for which to comply. A notice recipient may seek review of, or amendment to the notice, including specified time frames, under the Act (see section 429 of the Act).</p>
<p>How can a notice be revoked or amended?</p>	<p>By serving a written notice of amendment under section 279 of the Act, the council authorised officer may:</p> <ul style="list-style-type: none"> • extend the period of time the person has to comply with the notice • revoke or amend any requirements in the notice.
<p>How is a review requested?</p>	<p>A person who is issued an improvement notice from a council authorised officer may apply to EPA to have the decision to issue the notice reviewed - Section 429 of the Act.</p> <p>Applications to EPA must be made within 10 business days (after the day the notice is served).</p> <p>Notice recipients can request a review by calling EPA on 1300 372 842 (1300 EPA VIC).</p> <p>If council receives review applications by mistake, email them to EPA immediately at internalreviews@epa.vic.gov.au</p>
<p>How is a VCAT review requested?</p>	<p>If the review process by EPA is completed but the notice recipient still seeks further review, they may apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of the decision to issue the notice (section 430 and 431 of the Act).</p> <p>Applications for VCAT review must be made by the notice recipient within 15 days of EPA making its review decision under section 429. An applicant must seek review by EPA under section 429 the Act before seeking VCAT review of the decision (see section 431(2) of the Act).</p>
<p>Are there consequences if a</p>	<p>It is an offence not to comply with the requirements in an improvement notice under section 286 of the Act, without</p>

<p>person fails to comply?</p>	<p>reasonable excuse. Criminal or civil proceedings may be initiated for failure to comply.</p> <p>Only EPA may take enforcement action for alleged non-compliance with an improvement notice. Councils, therefore, need to refer alleged non-compliance to EPA, which will consider the appropriate action to take.</p>
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Prohibition notice

<p>What is it?</p>	<p>Prohibition notices (section 272 of the Act) requires a person to stop an activity that involves an immediate risk of harm.</p> <p>Prohibition notices may come into immediate effect and may be followed by an improvement notice to address ongoing OWMS issues.</p> <p>A recipient is entitled to apply to the Authority for a stay of the decision to issue the notice, pending the outcome of any application for internal review under the Act (see section 429 of the Act).</p>
<p>What are the grounds for issuing this notice?</p>	<p>An AO may issue a person with a prohibition notice if the AO reasonably believes that the person:</p> <ul style="list-style-type: none"> • is contravening or has contravened the Act, Regulations or a subordinate instrument made under the Act; or • is not complying or has not complied with a permission (for example OWMS permit) granted under the Act; or • has engaged in or proposes to engage in an activity that has caused or is likely to cause harm to human health or the environment from pollution or waste. <p>The notice may only be issued if, having regard to the immediacy of the risk and degree of harm that could occur, stopping an activity quickly is necessary.</p> <p>The notice must state the grounds on which it is issued.</p>
<p>Who may issue this notice?</p>	<p>A prohibition notice may be issued by an AO, including a council authorised officer, appointed under section 242(2) of the Act, in relation to OWMS.</p>
<p>Who may it be issued to?</p>	<p>Prohibition notices are issued to the person, meaning the natural person, body corporate or company, that is conducting the relevant OWMS activity.</p>

<p>What the notice requires a person to do?</p>	<p>The notice may prohibit the activity and may also require any other thing the AO reasonably considers necessary to prevent or minimise harm or risk of harm.</p>
<p>What information must the notice include?</p>	<p>s272(3) requires that an improvement notice must:</p> <ul style="list-style-type: none"> • specify the name and address of the person to whom it is issued • state the grounds on which the notice is issued • specify the actions that the person must take to comply with the notice • specify the date from which the prohibition takes effect and the period within which the person must do any other thing required by the notice • set out the penalty for failing to comply with the notice, and • specify how the person may seek review of the decision to issue the notice. <p>Use the template provided by EPA.</p>
<p>How can notices be issued?</p>	<p>Notices under the Act can be issued by:</p> <ul style="list-style-type: none"> • email • in person • postal mail • by leaving it at the usual or last known residential address (with a person apparently at least 16 years old). <p>For more information refer to Section 344 of the Act - Service of documents.</p>
<p>How long does it stay in place?</p>	<p>The notice must specify the date from which the prohibition takes effect and the time period for compliance with the notice. A notice recipient may seek review of, or amendment to the notice, including specified time frames, under the Act (see section 429 of the Act).</p>
<p>How can a notice be revoked or amended?</p>	<p>By serving a written notice of amendment under section 279 of the Act, the AO can:</p> <ul style="list-style-type: none"> • extend the time period that the notice is in effect, or • revoke or amend any requirements in the notice.
<p>How is a review requested?</p>	<p>A person who is issued a prohibition notice from an authorised officer (including a council authorised officer) may apply to EPA to have the decision to issue the notice reviewed -Section 429 of the Act.</p>

	<p>Applications to EPA must be made within 10 business days (after the day the notice is served).</p> <p>Notice recipients can request a review by calling EPA on 1300 372 842 (1300 EPA VIC).</p> <p>If council receives review applications by mistake, email them to EPA immediately at internalreviews@epa.vic.gov.au.</p>
<p>How is a VCAT review requested?</p>	<p>If the review process by EPA is completed but the notice recipient still seeks further review, they may apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of the decision to issue the notice (section 430 and 431 of the Act).</p> <p>Applications for VCAT review must be made by the notice recipient within 15 days of EPA making its review decision under section 429. An applicant must seek review by EPA under section 429 the Act before seeking VCAT review of the decision (see section 431(2) of the Act).</p>
<p>Are there consequences if a person fails to comply?</p>	<p>It's an offence not to comply with the requirements in prohibition notice under section 287 of the Act, without reasonable excuse. Criminal or civil proceedings may be initiated for failure to comply.</p> <p>Only EPA may take enforcement action for alleged non-compliance with a prohibition notice. Councils, therefore, need to refer alleged non-compliance to EPA, which will consider the appropriate action to take.</p>