

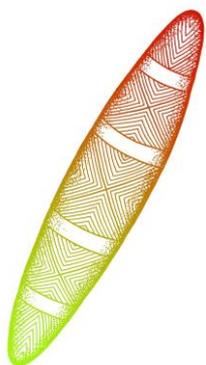


How to establish lawful place

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

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

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



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Overview

The [general environmental duty](https://epa.vic.gov.au/for-business/new-laws-and-your-business/general-environmental-duty) (GED) (epa.vic.gov.au/for-business/new-laws-and-your-business/general-environmental-duty) and permissions are effective tools for addressing waste management risks. However, the passing of waste through multiple points of management and control creates a significant risk of mismanagement. This includes:

- illegal dumping
- potentially dangerous or unsightly stockpiles
- inappropriate management of hazardous waste.

To address these challenges, the [Environment Protection Act 2017](https://legislation.vic.gov.au/in-force/acts/environment-protection-act-2017/004)¹ (the Act) (legislation.vic.gov.au/in-force/acts/environment-protection-act-2017/004) places additional duties on all businesses that generate or manage industrial waste.

[Industrial waste](https://epa.vic.gov.au/for-business/new-laws-and-your-business/manage-waste/industrial-waste) (epa.vic.gov.au/for-business/new-laws-and-your-business/manage-waste/industrial-waste) is waste created by commercial, industrial or trade activities or from laboratories. It includes household waste once it is gathered at a waste facility, such as a transfer station, or waste transported for fee or reward, other than council kerbside waste collection.

The [waste duties](https://epa.vic.gov.au/for-business/new-laws-and-your-business/manage-waste) (epa.vic.gov.au/for-business/new-laws-and-your-business/manage-waste) include an obligation that industrial waste can only be taken to a *lawful place*, being a place or premises authorised to receive that type of industrial waste. This duty applies to all participants in the waste supply chain – waste generators, transporters and receivers. If you are transporting reportable priority waste, you must [track the waste](https://epa.vic.gov.au/for-business/business-forms-permits-online-tools/epas-waste-tracking-system) (epa.vic.gov.au/for-business/business-forms-permits-online-tools/epas-waste-tracking-system) and transport the waste in a permitted vehicle.

Establishing lawful place means industrial waste can be lawfully deposited or received at the place or premises.

Once lawfully received, the waste receiver must comply with the GED by minimising risks of harm to human health or the environment arising from that waste, so far as reasonably practicable.

¹ As amended by the *Environment Protection Amendment Act 2018*.

Consequences of non-compliance

It is an offence to:

- make false representations that a person is authorised to receive industrial waste
- provide false or misleading information to EPA or any person in relation to industrial waste
- conceal information about the type, properties and classification of the waste or the risks of harm to human health or the environment.

Non-compliance can result in a penalty of more than \$80,000 for an individual or \$410,000 for a company.

In addition, if an individual is convicted of an industrial waste duty offence for a second time within five years, a court may impose an imprisonment term of up to two years.

How to establish lawful place

There are multiple pathways to establish a place or premises as a lawful place. A place may be a lawful place:

1. in low-risk circumstances specified in the Environment Protection Regulations 2021
2. if received in accordance with specifications set out in a determination
3. under a declaration of use
4. by a permission authorising receipt of the waste
5. under a section 48 determination
6. by being exempt from the need to hold a permission for receipt of the waste
7. by an emergency authorisation.

These pathways are described in detail in this publication.

1 Low risk circumstances set out in the Regulations

The [Environment Protection Regulations](http://epa.vic.gov.au/about-epa/laws/new-laws/subordinate-legislation) (the Regulations) (epa.vic.gov.au/about-epa/laws/new-laws/subordinate-legislation) outline low-risk circumstances that automatically make some sites a lawful place. If the circumstances in Table 1 apply to your site, it's a lawful place. You don't need additional approval from EPA.

Table 1. Deemed lawful place under the Regulations

Type of industrial waste	Circumstances authorised by the Regulations
Industrial waste that is not priority waste	Receipt of 5 m ³ or less of industrial waste that is not priority waste. This applies when the waste is for an activity that doesn't need a permission and isn't applied to land.
Industrial waste (all types)	Laboratories that receive waste for analysis. Sites from which industrial waste can be lawfully exported from Australia directly from the site.
Timber, including sawdust, treated with hazardous substances, (K310 – H)	When your site receives 5 m ³ or less of the waste, if using them for an activity that doesn't require a permission.
E-waste (T300), excluding batteries	
Tyres, including tyre pieces greater than 250 mm in size measured in any dimension (T140)	
Manure, including any mixture of manure and biodegradable animal bedding from agricultural sources (K220)	Discharge or deposit to land of less than 20 m ³ per month.
Reclaimed wastewater	A site can receive reclaimed wastewater if it: <ul style="list-style-type: none"> • is identified in an A14 permit (Reclaimed wastewater supply or use permit), or • matches the description in an A14 permit of a site where reclaimed wastewater can be used. <p>The wastewater must be used immediately and only for the purposes in the permit.</p>

Biosolids (K400 – NH)	<p>A site can receive biosolids if it:</p> <ul style="list-style-type: none">• is identified in an A15 permit (Biosolids supply or use permit), or• matches the description in an A15 permit of a site where biosolids can be used. <p>The biosolids must be used immediately and only for the purposes in the permit.</p>
Reportable priority waste (other than tyres or soil)	<p>A site can receive reportable priority waste (other than tyres or soil) if it:</p> <ul style="list-style-type: none">• is identified in an A16 permit (Supply or use or reportable priority waste permit), or• matches the description in an A16 permit of a site where that waste can be used. <p>The waste must be used immediately and only for the purposes in the permit.</p>
Trade waste	<p>Discharge or deposit into the sewerage system of a water corporation, in accordance with a trade waste agreement under the Water Act 1989 (legislation.vic.gov.au/in-force/acts/water-act-1989).</p>
Greenhouse gas substances	<p>Sites that inject greenhouse gases as part of greenhouse gas sequestration operations under the Greenhouse Gas Geological Sequestration Act 2008 (legislation.vic.gov.au/in-force/acts/greenhouse-gas-geological-sequestration-act-2008).</p>

2 Specifications set out in a determination

Determinations are made by EPA and set required specifications for the lawful deposit, transport and/or receipt of industrial waste, subject to set specifications. This means the person, place or premises will be authorised to receive the specified industrial waste, ensuring that the waste duties are met by all parties along the waste supply chain.

Under Regulation 63(b), any site receiving industrial waste in accordance with specifications in a determination is a lawful place. Regulation 63(j) provides lawful place for the use of waste tyres in accordance with specifications set out in a determination. You don't need a written declaration or additional approval from EPA.

Determinations in place from 1 July 2021:

- processed organics
- livestock manure and effluent
- fill material
- recycled aggregates

EPA may make further determinations in the future to provide new pathways to lawful place for other types of industrial waste. These will be published on the EPA website.

3 Declaration of use

A [declaration of use](https://epa.vic.gov.au/for-business/new-laws-and-your-business/manage-waste/declaration-of-use) (DoU) (epa.vic.gov.au/for-business/new-laws-and-your-business/manage-waste/declaration-of-use) is a low-burden tool that enables a producer and receiver to meet their lawful place duties. The DoU is a self-assessed declaration that supports the safe reuse and recovery of materials from low-risk waste. It is a short two-page form that does not require EPA approval, notification or tracking.

The DoU includes a declaration from both the producer and the receiver. The person who creates or controls the waste must include the following information in the DoU:

- [types of waste](https://epa.vic.gov.au/for-business/new-laws-and-your-business/manage-waste/waste-classification) (epa.vic.gov.au/for-business/new-laws-and-your-business/manage-waste/waste-classification)
- risks of harm to human health or the environment
- [reasonably practicable](https://epa.vic.gov.au/about-epa/laws/new-laws/what-is-reasonably-practicable) (epa.vic.gov.au/about-epa/laws/new-laws/what-is-reasonably-practicable) steps to minimise those risks.

The waste receiver must declare the receiving premises suitable to use the waste.

3.1 When to make a DoU

You can't make a DoU to establish lawful place:

- for reportable priority waste, except waste tyres
- if you're receiving waste for an activity that needs a permission.

You can make a DoU to establish lawful place under Regulation 64(1) for the following:

- The immediate use of waste for resource recovery other than application to land. For example, transporting food waste for animal stock feed.
- The immediate use of waste as a substitute for raw material in a commercial, industrial, trade or laboratory activity, other than application to land. This doesn't include soil. For example, using shredded tyres for a playground surface or reclaimed wood for floorboards.
- The application to land of:
 - commercial garden and landscaping organics that don't contain physical or chemical contamination (K300)
 - untreated timber, including sawdust (K310 – NH)
 - natural organic fibrous waste.

3.2 General requirements for DoUs

A DoU can be made for a one-off consignment or for a specified period of time, up to 12 months. A person who makes a DoU must retain a copy for two years from the date it was made.

Providing false or misleading information in a DoU is an offence. Concealing information about the type, properties and classification of the waste or the risks of harm to human health or the environment is also an offence. Individuals and companies can face [penalties](https://epa.vic.gov.au/for-business/penalties) (epa.vic.gov.au/for-business/penalties) for not complying with the law.

If a person who makes a DoU subsequently becomes aware of a change in circumstances that materially affect the DoU to render it inaccurate, the person must notify the other party to the DoU as soon as practicable.

An EPA authorised officer may ask to view the DoU for compliance purposes. EPA may cancel a DoU or impose conditions on it by providing written notice to each person who made the declaration. A DoU has no effect from the time EPA provides written notice of the cancellation in accordance with regulation 64(9).

4 Permission authorising receipt of waste

You can establish lawful place with a [permission](http://epa.vic.gov.au/for-business/new-laws-and-your-business/permissions) (epa.vic.gov.au/for-business/new-laws-and-your-business/permissions). EPA uses permissions – licences, permits and registrations – to regulate activities according to the level of risk they pose. Some permissions authorise you to receive specific types of waste. If your site has a permission to receive a certain type of waste, then that site is a lawful place.

Table 2 identifies permission activities set out in the Regulations that commonly authorise receipt of industrial waste and therefore provide for a place or premises to be a lawful place. It also identifies the types of industrial waste that can be authorised for those permission activities. The types of industrial waste a specific site may receive under a permission are set out in the permission for that site. For example, landfills are authorised to receive different types of waste depending on design and specifications of the landfill.

Check the public register to confirm specific types of industrial waste that can be received at a permissioned site.

Table 2. Receipt of industrial waste authorised by a permission

Type of industrial waste	Permission activity	Type of permission*
Solid industrial waste (as specified in the permission)	Operating a landfill	A05a operating licence (Landfills-excluding municipal landfills servicing <5000 people) A05b permit activity (Municipal landfill servicing <5000 people)
Industrial waste: <ul style="list-style-type: none"> including specified combustible recyclable and waste material being paper, cardboard, wood, plastic, rubber, tyres, tyre-derived waste, textiles, e-waste, metal and other materials with combustible contaminants, combustible by-products of metal processing activities and refuse-derived fuel 	Receiving, storing or processing waste generated at another site for the purposes of resource recovery or offsite transfer or disposal (waste and resource recovery). Note: a section 48 determination is proposed to allow council transfer stations to receive small volumes of reportable priority waste where the required conditions are met	A13a operating licence (Waste and resource recovery - large) A13b permit (Waste and resource recovery - medium) A13c registration (Waste and resource recovery - small)

<ul style="list-style-type: none"> not including reportable priority waste (except tyres) 		
Waste (as specified in the permission)	Recovering energy from waste	A08 operating licence (Waste to energy)
Industrial waste (as specified in the permission)	Immobilising, thermally degrading or incinerating waste	A02a operating licence (Other waste treatment – incineration)
Waste (as specified in the permission)	Discharge or deposit of waste to aquifer	A18 permit (Discharge or deposit of waste to aquifer)
Reportable priority waste (other than tyres)	Storing, treating, reprocessing, containing or disposing of reportable priority waste (other than tyres)	A01 operating licence (Reportable priority waste management)
Wastepaper	Processing wood, wood products, wastepaper or other cellulose materials to form pulp, paper or cardboard	F03 operating licence (Paper pulp mills)
Glass waste	Reprocessing glass waste	H05b operating licence (Glass works – large reprocessing) H05c registration (Glass works – small reprocessing)
Waste tyres (whole rubber tyres)	Storing waste tyres	A09a operating licence (Waste tyre storage - large) A09b registration (Waste tyre storage -small)

<p>Specified electronic waste:</p> <ul style="list-style-type: none"> • waste rechargeable batteries • cathode ray tube monitors and televisions • flat panel monitors and televisions • information technology and telecommunications equipment • lighting and photovoltaic panels 	<p>Reprocessing specified electronic waste</p>	<p>A02b operating licence (Other waste treatment – e-waste >500 tonnes)</p> <p>A02c registration (Other waste treatment – e-waste 500 tonnes or less)</p>
<p>Organic waste</p>	<p>Processing organic waste by aerobic or anaerobic biological conversion</p>	<p>A07a operating licence (Organic waste processing - large)</p> <p>A07b registration (Organic waste processing - small)</p>
<p>Food waste</p>	<p>Pet food processing or manufacturing</p>	<p>D05 operating licence (Pet food processing)</p>
<p>Animal skin</p>	<p>Animal skin tanning or re-tanning</p>	<p>D03 operating licence (Animal skin tanning works)</p>
<p>Biomedical waste</p>	<p>Temporary storage of 40 m³ or less of biomedical waste not generated at the site by a council, a health service or an ambulance service</p>	<p>A21 registration (Temporary storage – biomedical waste)</p>
<p>Double wrapped, non-friable asbestos</p>	<p>Temporary storage of less than 10 m³ of double wrapped, non-friable asbestos not generated at the site at:</p> <ul style="list-style-type: none"> • a transfer station allowed to accept asbestos • a depot of a public utility that is 100 m or more from sensitive land uses 	<p>A22 registration (Temporary storage – asbestos)</p>

Sewage (including sullage)	Treating, discharging or depositing sewage (including sullage)	A03 operating licence (Sewage treatment)
Industrial wastewater	Discharging or depositing industrial wastewater generated at another site	A04 operating licence (Industrial wastewater treatment)
Septic tank sludge or sewage treatment plant sludge	Disposing septic tank sludge or sewage treatment plant sludge to land	A06 operating licence (Disposal to land)
Designated waste, being reportable priority wastes in liquid form with the following waste codes: <ul style="list-style-type: none"> • J100 – Waste oils, hydrocarbons, emulsions and transformer fluids excluding poly-chlorinated biphenyls • J120 – Waste oil/water, hydrocarbons /water mixtures or emulsions • J130 – Triple interceptor waste and stormwater contaminated with oil or hydrocarbon • K100 – Animal effluent and residues, including abattoir wastes and other wastes from animal processing • L100 – Car and truck washwaters 	Temporary storage of 1,000 L or less of designated waste not generated at the site	A23 registration (Temporary storage – designated waste)
Category D waste soil	Containment on a project site generated at the project site	A17 permit (Containment of Category D waste soil)
Waste acid sulfate soil (that does not have contaminant concentrations exceeding the upper limits for fill material containment concentrations specified in the Waste Disposal Categories—	Receiving actual acid sulfate soil or potential acid sulfate soil for treatment or amelioration	L08 registration (Receiving Waste Acid Sulfate Soil for treatment)

Characteristics and Thresholds or contains asbestos)		
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*Other permission types not included in the table may authorise receipt of industrial waste.

5 Section 48 determination

EPA can make a [section 48 determination](http://epa.vic.gov.au/about-epa/laws/epa-tools-and-powers/epa-determinations-and-exemptions) (epa.vic.gov.au/about-epa/laws/epa-tools-and-powers/epa-determinations-and-exemptions) allowing a site to undertake a permission activity without holding a permission if they comply with the requirements set out in the determination. Where the permission activity would authorise receipt of industrial waste, the section 48 determination also provides that a site is a lawful place to receive the waste.

A section 48 determination is proposed for council transfer stations receiving reportable priority waste. This would allow council-run transfer stations to lawfully receive some reportable priority wastes, such as waste motor oils, without an A01 licence.

6 Exempt from the need to hold a permission

Some sites can be a lawful place when they're [exempt from holding a permission](https://epa.vic.gov.au/for-business/new-laws-and-your-business/permissions/permission-exemptions) (epa.vic.gov.au/for-business/new-laws-and-your-business/permissions/permission-exemptions).

Sites can be exempt in two ways:

- under the Regulations
- if granted an exemption by EPA.

6.1 Exempt under the Regulations

There are two circumstances where a site can be exempt from having to hold a permission under the Regulations. The place or premises is a lawful place to receive the industrial waste identified in Table 3 in those circumstances. No EPA approval is required.

Table 3: Lawful place as exempt from need to hold a permission under the Regulations

Type of industrial waste*	Permission activity	Exempt from holding permission if:
Sewage (including sullage)	A03 operating licence Treating, discharging or depositing sewage (including sullage)	<ul style="list-style-type: none"> • the site discharges or deposits waste solely to land at a design capacity of 100 000 L per day or less, and • holds an A14 permit or an A15 for the activity
Wastepaper	F03 operating licence Processing wood, wood products, wastepaper or other cellulose materials to form pulp, paper or cardboard	The site produces less than 30,000 tonnes per year of pulp, paper or cardboard

6.2 Exemption granted by EPA

Occasionally, issuing a permission may be disproportionate to the risks of managing waste. In these cases EPA may grant an exemption from holding an operating licence or a permit. Where the permission would authorise receipt of industrial waste, an exemption also provides that a site is a lawful place to receive the waste. Before we do this you must show us that doing so won't harm human health or the environment.

You can find existing exemptions on the public register. You can apply for an exemption on the EPA Portal.

7 Authorised disposals and discharge

EPA may grant an Authorised disposal and discharge (ADD) for the storage, treatment, handling, deposit or disposal of waste under section 157 of the Act. Where the ADD authorises the receipt of industrial waste at a place or premises, the place or premises is a lawful place to receive that industrial waste.

To grant an ADD that authorises the receipt of industrial waste, EPA must be satisfied the authorised activity will:

- not have significant adverse effects on human health or the environment, and
- assist in a temporary emergency, or provide temporary relief of a public nuisance or community hardship.

We keep details of ADDs on the public register. These types of approvals are often urgent. This means there might be a delay between EPA granting an ADD and the details appearing on the register. Contact EPA to confirm if an ADD exists that applies to your circumstances.

EPA guidance does not impose compliance obligations. Guidance is designed to provide information to help duty holders understand their obligations under the EP Act 2017 and subordinate instruments, including by providing examples of approaches to compliance. In doing so, guidance may refer to, restate or clarify EPA's approach to statutory obligations in general terms. It does not constitute legal or other professional advice and should not be relied on as a statement of the law. Because it has broad application, it may contain generalisations that are not applicable to you or your particular circumstances. You should obtain professional advice or contact EPA if you have any specific concern. EPA Victoria has made every reasonable effort to provide current and accurate information, but does not make any guarantees regarding the accuracy, currency or completeness of the information.