



Second Exposure Draft – Regulations and Environment Reference Standard

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Second Exposure Drafts

Environment Protection Regulations 2021 (Vic)

Environment Protection Transitional Regulations 2021 (Vic)

Environment Reference Standard

- Released on 16 December 2020 by Victorian Government
- Endorsed position of Victorian Government
- No further consultation
- Final stages – scrutiny by Ministers, certification by Chief Parliamentary Council and approval by Governor in Council then published in the Victorian Government Gazette
- Second exposure draft released to allow the community to prepare for commencement (www.epa.vic.gov.au/about-epa/laws/new-laws/subordinate-legislation)
- Commencement on **1 July 2021**

Environment Protection Regulations 2021 (Vic)



Environment Protection Regulations

Existing concepts transposed

Source	Provision
<i>Environment Protection (Scheduled Premises) Regulations 2017</i>	Chapter 3 (rr 16 – 42), Schedule 1
<i>Environment Protection (Industrial Waste Resource) Regulations 2009</i>	Chapter 4 (rr 60 – 92), Schedule 6
<i>Environment Protection (Fees) Regulations 2012</i>	Chapter 8 (rr 172 – 215), Schedule 11
'Waste Codes' (2016) IWRG 822.3	Schedule 5
<i>Environment Protection Act 1970</i> – Schedule A	Chapter 7, Schedule 10
<i>State Environment Protection Policy (Air Quality Management)</i>	Schedule 4
<i>Waste Management Policy (Siting, Design and Management of Landfills)</i>	Chapter 4 (r 101), Schedule 8

Environment Protection Regulations

Existing concepts transposed (continued)

Source	Provision
<i>State Environment Protection Policy (Waters)</i>	Chapter 2 (r 15)
<i>Industrial Waste Management (Control of Ozone-Depleting Substances)</i>	Chapter 5 (r 111)
Notifiable Chemical Order - CFCs	Chapter 5 (r 102)
<i>Environment Protection (Vehicle Emissions) Regulations 2013</i>	Chapter 5 (rr 135 – 158), Schedule 9
<i>Environment Protection (Residential Noise) Regulations 2018</i>	Chapter 5 (rr 114 – 115)
<i>State Environment Protection Policy (Control of Noise from Public Premises) N-2</i>	Chapter 5 (rr 122 – 131)
<i>State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) N-1</i>	Chapter 5 (rr 116 – 121)
<i>Waste Management Policy (Used Packaging Materials)</i>	Chapter 5 (rr 133 – 134)

Environment Protection Regulations

Existing concepts transposed (continued)

Source	Provision
<i>Environment Protection (Distribution of Landfill Levy) Regulations 2010</i>	Chapter 3 (rr 43 – 52)
<i>Environment Protection Act 1970 – Part IXB (Septic tank systems)</i>	Chapter 5 (rr 159 – 163)
<i>Waste Management Policy (Solid Fuel Heating)</i>	Chapter 5 (rr 109 – 110)
<i>Industrial Waste Management Policy (National Pollution Inventory)</i>	Chapter 5 (rr 103 – 108)
<i>Waste Management Policy (Storage of Waste Tyres)</i>	Schedule 2
<i>Environment Protection Act 1970 – Part VIIA (Litter and material that may become litter)</i>	Chapter 4 (rr 54 – 59)
<i>Waste Management Policy (E-waste)</i>	(rr 23, 29, 63, 224 and Schedule 1, Items 3 and 4)

Environment Protection Regulations

Existing concepts transposed (continued)

Source	Provision
<i>Industrial Waste Management Policy (Movement of Controlled Waste between States and Territories)</i>	Schedule 1, Items 17 and 18
<i>Waste Management Plan (Waste Acid Sulfate Soils)</i>	Schedule 1, item 79

Contaminated Land

Duty to notify of contaminated land & duty to manage contaminated land

- Part 3.5 of the *Environment Protection Act 2017* (Vic)
- 'land' includes buildings and infrastructure and groundwater
- Unclear how land is delineated (cadastral boundaries)
- Adopts National Standards for benchmark of contamination (Health Investigation Levels)
- Unclear which HIL/HSL/GILs are adopted – residential / open space / commercial-industrial
- Unclear the standard of assessment to form opinion on 'contaminated'
- Unclear the standard of assessment to form opinion on transient contamination (i.e. soil vapour)
- PFAS not criteria in National Standards
- Determination for naturally occurring contamination – used in man made circumstances.
- No public register

Public Register

- Provides for permissions and decision made by the EPA
- Excludes remedial notices
- Excludes notification of contaminated land
- What is the mechanism to search for notifiable contaminated land?
- How is this to be integrated with the *Sale of Land Act 1962 (Vic)*?
- Appears to be a missed opportunity from recommendations of the Inquiry in to the EPA

Permissions

- **Permissions will expire** including operating licences
- No express provision for 'grandfathering' licences
- On transition of licences to operating licences the EPA may amend the operating licence to introduce new conditions provided in the reformed legislation within 1 year of commencement without any right of review to the Victorian Civil and Administrative Tribunal
- If commitment given, how will this continue if an amendment or expansion is sought to the transitioned operating licence?
- Detailed list of changes set out in *Alert – Second Expose Drafts*
- Example – closed landfills continue with operating licence
- Example – Waste and Resource Recovery Facilities require operating licence

- Picks up miscellaneous permissions such as treatment of waste acid sulfate soils (L08) and interstate transport of waste (A11 incoming and A12 outgoing)
 - *‘Waste disposal categories – characteristics and thresholds’* (Pub 1828.1 – June 2020)
 - Contaminant thresholds for soil and industrial waste merged
 - Contaminants increased from 33 to 69
 - No lower limit for Category C industrial waste – so all industrial waste excluding soil is Category C
 - Category D introduced for soils, with upper limits for ‘fill material’ for 25 contaminants – so all soil with remaining 44 contaminants are Category D
 - PFAS removed from thresholds
- ‘authorised to receive industrial waste’ activity carries forward exemptions – need clarity on how ‘trade waste’ regulated when transported by road
- Waste codes – M270 PFAS, how is this to be used noting the removal contaminant threshold
- Industrial wastes now have codes – expect to be picked up in permissions

Financial assurance

- Expanded prescribed permission activities now require financial assurance
- Waste and resource recovery (A13 a and A 13b)
- How will influence SWRRIP and Regional WRRIPs and future Victorian Recycling Infrastructure Plan
- Prescribed risk assessment criteria:
 - risk of potential harm to human health from activity and its location;
 - compliance with environment protection legislation, including any officer of a corporation individually;
 - whether a prohibited person;
 - financial capacity of entity undertaking activity;
 - ongoing profitability of activity and value of investment;
 - nature, extent and duration of clean up.

Environmental auditors

- Expanded functions of environmental auditors now codified in Environment Protection Regulations rather than the Principal Act
- Ability for the EPA to prescribe new environmental auditor functions by notice in Government Gazette
- Expansion of environmental auditor functions needs to be balanced with access to auditors and the cost of these functions

Environment Reference Standard



Environment Reference Standard

- Transposes indicators, objectives, values, segments, land use categories etc from State Environment Protection Policies
- Some changes have occurred – requires careful examination
- Table 2.2 Indicators and objectives for the ambient air environment
- Odour – objective “an air environment that is free from offensive odours from commercial, industrial, trade and domestic activities”
- will be applied through permissions
- How will land use zoning etc be taken into account?

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