

31 October 2019

EPA Victoria
Director of Policy and Regulation
GPO Box 4395
Melbourne Victoria 3001

Dear Madam/ Sir,

Review of proposed Environment Protection Regulations (onsite wastewater)

EHPA has reviewed the Environment Protection Authority Victoria (EPA) and the Department of Environment, Land, Water and Planning (DELWP) proposals for reforming the Environment Protection Regulations.

Attached please find a comprehensive submission based on comments received from EHPA members based around Victoria. EHPA thanks the Departments for the opportunity to provide comments on this matter. The points raised in this submission are significant and the recommendations warranted. We especially urge EPA & DELWP to establish direct contact with the Victorian Councils and ensure that they become a key contributor in the current reforms. EHPA members have indicated that the current proposals and the Regulatory Impact Statement require substantial work and that they look forward to working on this reform with your Departments.

Should you require further information please do not hesitate to contact Anton Maas, Director, EHPA on telephone 02 6028110 or email: anton.maas@indigoshire.vic.gov.au.

Yours sincerely



Sarah Annells

National President, Environmental Health Professionals Australia

EHPA Submission: Review of proposed Environmental Protection Regulations, October 2019

Submission

Review of proposed Environment Protection Regulations & Regulatory Impact Statement

EHPA

October 2019

Environmental Health Professionals Australia

Environmental Health Professionals Australia (EHPA) is a national organisation which is committed to excellence in Environmental Health practice. EHPA represents the interests of more than 500 members (including 468 members that work for local government) at all levels of government through advocacy and provides opportunities for members to comment on policy issues through our special interest groups (including the environment special interest group) and regional groups (Community Of Practice (COP)).

In preparing this submission, the input and advice from many EHPA members (mainly Environmental Health Officers working in Victoria) is acknowledged.

Summary

EHPA has reviewed the Regulatory Impact Statement (RIS) and the new Environment Protection regulation. The focus of this submission is on onsite wastewater management.

Councils are responsible for the approval of On Site Wastewater Management (OSWM) systems and oversee the use and ongoing maintenance of OSWM systems (<5,000 litres). Many Local governments struggle with these tasks and encounter difficulties in monitoring OSWM systems.

Two options were put forward in the RIS and the option, where Council approves the installation and the ongoing operation and maintenance on-site systems will be addressed primarily through the General Environmental Duty (GED), was identified as the preferred option. This proposal to regulate the ongoing management of OSWM systems by means of GED only is a significant change and one that will have some significant implications for councils, the community and the environment that needs to be considered and addressed. As a result EHPA members are of the opinion that more consultation needs to occur before this piece of legislation is introduced. They are also of the opinion that the RIS needs to be revised and the enforcement options proposed in the regulation need to be examined in more detail.

The justification for EHPA's position is outlined in this submission and as a result it is recommended that EPA and DELWP:

1. Delay commencement of regulations until RIS is revised (i.e. prescribing fees, cost analysis);
2. Revise Regulatory Impact Statement in consultation with Councils, water authorities and other key Stakeholders. Then based upon new costing in RIS reassess if option 1 is still the preferred option;
3. Set up OSWM committee to coordinate OSWM reform. This committee must be actively Involved in the planning and implementation of the new RIS and must have representatives of Council water authorities, EPA and other key stakeholders;
4. Provide local governments with the legislative tools to deal with all OSWM systems (including applications) and the ongoing management of these systems;
5. Provide additional funding opportunities for Councils to manage OSWM systems (e.g. contribution water authorities or introduction wastewater levy); and
6. Reconsider need and value of annual returns.

Introduction

EHPA members and Community Of Practice Groups have provided feedback regarding the onsite wastewater management component of this important piece of legislation. EHPA members have indicated that they are concerned that the proposed regulations will not provide good outcomes for the environment nor will it improve the protection of human health. It appears that only costs to OSWM system owners was considered to be a factor in the decision-making process in the RIS. The wider benefit to the community was not properly taken into consideration.

Local Governments are responsible to manage the installation, use and ongoing management of OSWM systems (<5,000 litres) in Victoria and they must manage any public health and environmental risk from these systems. Most Local governments struggle with this task and encounter difficulties in monitoring OSWM systems. The difficulties local governments face are well documented in the VAGO 2006 & 2018 reports. EPA and DELWP were also made aware of these concerns during several Onsite Domestic Wastewater Working Group meetings, which were organised by MAV during the consultation phase of this review.

EHPA members saw the review of this piece of legislation as an ideal opportunity to come up with a robust piece of legislation that would provide local governments with the tools to manage failing OSWM systems and deal with other constraints encountered in administering this piece of legislation like funding of DWMP's. Unfortunately, EPA and DELWP did not use the opportunity to bring all key stakeholders to the table and also did not support the concerns that were raised by local government EHO's during the ODWW meetings.

Discussion on proposed changes

The regulatory Impact Statement (RIS) indicates that the preferred option is for councils to continue to issue permits to construct, install or alter on-site systems with flow rates less than 5,000 litres per day (i.e. the current approach under the EP Act 1970). The RIS assessed 2 options:

- Under Option 1, the ongoing operation and maintenance on-site systems will be addressed primarily through the GED. Councils would also be required to refuse an application to alter on those same grounds,
- Under Option 2, councils would issue two types of permits, to:
 - construct, install or alter on-site systems with flow rates less than 5,000 litres any day (as per option 1); and
 - operate and maintain existing on-site systems with flow rates less than 5,000 litres any day. Permits would be renewed periodically (once every 5 years).¹ In order to comply with permits, occupiers of premises with on-site systems would need to ensure that the system was operating appropriately and was being maintained to an acceptable standard.

The RIS stated that "Option 2 is not preferred because while it is likely to be more effective in addressing harms to human health and the environment caused by existing on-site systems, DELWP and EPA consider that the these benefits would not be sufficient to outweigh its significantly higher costs (assuming full compliance)". The RIS therefore determined that option 1 was the preferred option.

¹ New EP legislation states that a permit may be renewed for a period of not more than 5 years.

Option 1 is not the preferred option for EHPA members. Our members foresee significant problems with this option. The first major point is that it is unclear what the exact responsibilities are of OSWM systems owners under the GED. It is also clear that the enforcement tools proposed in the regulation will not be effective. Many members have also indicated that they are surprised that the notable recommendations made by Victorian Auditor General's Office (VAGO) (2006 & 2018) have not been taken into consideration.

Assessments from members indicate that the costs analysis used in the RIS is incomplete. For example, it has not taken into account the wider benefit of good functioning OSWM systems (i.e. the burden of disease has not been quantified in the cost analysis, or more clearly does not account for achieving a good public health outcome). Some assumptions are incorrect like the additional costs indicated on page 74 should not be considered an additional cost. OSWM systems do not last forever (irrigation for instance has only a 10 year expected lifespan) as these systems need to be upgraded/ replaced at some point in time. It appears that the RIS considers an OSWMS installation to be a once off expense. The installation of an OSWM system is not a once off expense as all systems need to be maintained and replaced when they stop functioning.

We have outlined below what we think will be the implications of these proposed legislative changes. We have provided constructive recommendations that would improve the current regulation and have also come up with suggestions on how SEPP and the new regulation could complement each other. This approach will continue to protect the environment and health of communities and will preserve the capacity of councils to respond to complaints and/ or deal with failing septic systems.

By adopting the current regulation and relying on option 1 from the RIS it will:

- significantly reduce the annual revenue of local governments environmental health departments;
- miss the opportunity to introduce comprehensive enforcement tools to address failing septic systems. The new regulations actually remove the most efficient tool (i.e. permit with ongoing conditions) to deal with failing septic systems;
- increase the uncertainty for owners and councils in regards to duties regarding the ongoing maintenance of OSWMs systems and therefore it is likely to increase the risk (impacts) for Councils and community;
- create a system where council must rely on referring non-compliances to the EPA to enforce;
- burden Councils with additional reporting duties with no clear purpose for those reports

It is suggested the above implications can be addressed, but only if local government is actively involved in this reform as they are the administering authority for this part of the Act.

The issues and recommended responses are discussed in more detail below.

Issues

Issue 1 Implications of reducing revenue stream

The management of onsite wastewater systems is a large component of the day to day work of regional and rural EHO's. Councils must deal with failing onsite wastewater systems and they currently solve these issues with highly inadequate regulatory tools. As a result, they spend a significantly larger amount of time to resolving these issues.

Most Councils do not achieve any cost recovery, especially if they have to conduct proactive DWMP inspections.

It is noted that the current proposal is to move away from Councils setting the fees for permits to a prescribed fee process. EHPA is concerned that the proposed set fee will be detrimental. This proposal is not supported by our members as the proposed fee structure is not fair and equitable for either ratepayers, or council, and will create an increased administrative burden. Figures 1 & 2 provide some more detail regarding fees charged for a number of Councils and a breakdown of time allowances.

The current proposal of a minimum fee to cover the first 4.1 hours and then additional fees based on the amount of hours required is unjust. The minimum fee (4 hours) may cover the costs associated with processing a permit that is within a 20 minute drive from our office however it fails to go anywhere near covering the cost for a permit that is 1 to 2 hours' drive from a Council office. Councils do not set fees based on a ratepayer's location; fees set by Councils are averaged out so that the cost of issuing permits is shared by all permits.

Example 1

Indigo Shire issued 66 permits in 2018. The revenue collected was approximately \$30,000. This revenue was used to pay for EHO time (incl. administration of permit applications, 1 inspection, transport, education, ongoing compliance costs (e.g. administration AWTS service dockets). There was no full cost recovery. With the proposed set fee the revenue will drop to approximately \$25,000.

Example 2

Colac Otway Shire issued 90 permits in 2018. The revenue collected was approximately \$69,000 and revenue would fall to less than \$35,000 if set fee was introduced.

Councils have already explored, in detail, potential options for cost recovery or for ongoing wastewater management. There are no options available. The reduced funding will therefore reduce service levels. Councils anticipate that the number of septic related pollution incidents will increase as Councils are getting less involved. This will result in even greater budget deficits.

Figure 1: Fees and number of septic tank applications

Name of Council	Fees			
	PTI Fee (\$)	No. of PTI issued in 2018	PTA fee (\$)	No. of PTA issued in 2018
Alpine Shire	490	45	245	11
Ballarat City	776	60	379	12
Benalla Rural City	411	26	366	2
Colac Otway Shire	770	90	308	10
Indigo Shire	530	47	265	19
Murrindindi	540	89	300	17
Surf Coast Shire	608	56	268	23
Towong Shire	520	8	255	8
Total		421		102
Average	580		298	

Figure 2 provides greater insights to the diversity of fees and costs by an interface, regional and small rural councils.

Approval Step	Time allowance
<ul style="list-style-type: none"> ◆ Application is received by Council. <ul style="list-style-type: none"> a. Payment is received by cashiers. b. Application is scanned and lodged into Council's record management system. c. Application is lodged in Council's wastewater management system. 	30 mins
<ul style="list-style-type: none"> ◆ Desktop assessment is undertaken by Council officer. Length of time will vary depending on application complexity including if it has an LCA 	30 mins to 1hr (possibly longer)
<ul style="list-style-type: none"> ◆ Site visit – application 	40 mins to 4 hours (return trip and depends on size of municipality)
<ul style="list-style-type: none"> ◆ Permit Issued 	30 mins
<ul style="list-style-type: none"> ◆ Site visit – during installation of system 	40 mins to 4 hours (return trip and depends on size of municipality)
<ul style="list-style-type: none"> ◆ Site visit – final inspection of system once installation is complete 	40 mins to 4 hours (return trip and depends on size of municipality)
<ul style="list-style-type: none"> ◆ Issue Approval to Use 	30 mins
Time taken	4 hrs to 14.5 hours
Please note additional time can occur at any time in the form of: <ul style="list-style-type: none"> ◆ Requesting, receiving and assessing additional information ◆ Re visiting site if the system is not installed correctly ◆ Contact with the applicant when the permit is due to expire 	

No provision is made within the Regulations for the charging of additional types of fees which is extremely limiting and will result in Councils charging the same fee regardless of the amount of work required. Most Councils would have the following additional charges:

- a. Permit Alteration Fee – a fee to reflect the cost of reissuing a permit following a minor change such as change of plumber or system type (generally one type of AWTS to another)
- b. Alteration to Existing System – this fee is charged when someone with an existing system is adding to the system due to alterations or additions to their home.
- c. Inspection Fee – this fee can be charged when more than 3 inspection are required on a system due to issues with the installation. Issues can include wrong system being installed, wrong location, wrong trench depth, use of inferior materials, visiting the site on request of applicant to undertake final inspection and the installation is not finished.
- d. Additional fee for very large systems (e.g. multiple tanks, balance tanks, timer systems, extremely large disposal areas).

Councils have been required to prepare Domestic Wastewater Management Plans (DWMPs) since 2005, which identify both the problems and potential solutions. It is interesting to note that this requirement is being retained for 'at least the next 2 years', yet there remains no mechanism to fund either the development or more importantly, implementation of the plans. What is the point of a DWMP that cannot be implemented? Local Government have lobbied strongly in the past, for the introduction of an Environmental (Wastewater Management) Levy collectable through Council's rating system. It is the obvious solution. This would be collectable on all developed properties that are not connected to a reticulated sewer system. The levy would support not only the development of DWMP's but the implementation of the action plans and fits directly with the objectives of the new Act and regulations which is to be 'proactive' not 'reactive'. With no proposed funding stream being provided for DWMPs, the documents produced will contribute little value to the improvement of wastewater management across Victoria as Council's simply do not have the funds.

Issue 1 Recommendations:

- 1.1 Conduct a more comprehensive analysis of council costs to inform if fee set in regulation is appropriate. This should be conducted in consultation with the MAV and all Councils in Victoria.
- 1.2 Delay commencement of regulations prescribing fees pending this analysis.

Issue 2 Failure to provide efficient enforcement tools to deal with failing septic systems

The proposed regulations only provide extremely limited opportunities to enforce (i.e. not complying with a permit (r33(2)), and enforcement regarding not fulfilling GED). The new regulations are very difficult to interpret and it is unclear how they will be able to be used to regulate onsite wastewater systems that do not have a permit (e.g. illegally installed or lost Council records) or systems that have very old permits with inadequate or poorly constructed conditions.

Our members are concerned that the current proposal to rely on option 1 and the GED for ongoing maintenance will not give Councils and EPA access to efficient tools to deal with failing septic systems. EPA has suggested repeatedly that enforcement can be undertaken under the General Environmental Duties (GED), however in separate correspondence it has been made clear this is not the case. The following is a quote in an email received from the EPA recently:

"The GED is enforceable against an individual (assuming they are not conducting a business or understanding) by way of a notice (e.g. improvement notice). If an individual fails to comply with a notice, that failure contravenes a separate offence which is criminally enforceable. They are not criminally liable for a breach of the GED in its own right."

The catch is that criminal prosecution for any failure to comply with a notice is a non-delegable power outside of EPA employees- or we cannot delegate this to council officers. So a failure to comply would need to be refer to us for further enforcement proceedings."

To summarize: Issuing a notice can be undertaken by Council. However, failure to comply with the Notice must be prosecuted by the EPA and is a 'criminal' offence. This is not proportional to the type of non-compliance and EPA will not 'prosecute' for failure to obtain a permit to install a septic tank system. Under this system Council must forward each notice that has not been complied with to the EPA to undertake enforcement action.

The regulations in their current form actually make it advantageous to the installer NOT to get a permit, as there is no proportional penalty available to Councils to regulate them when they don't do the right thing.

Additionally one of the issues that Local Government has with the current legislation is that the standard statute of limitation (12 months) applies to the offence of installing a system without a permit. Councils often find out about systems 'years' after the installation has occurred. Legal advice has been sought by a number of Councils over the years and if the offence of installing the system occurred more than 12 months ago, the advice is that no legal action can be taken. This is extremely frustrating when the installation has been undertaken by a licensed plumber, someone that 'knows' that a permit is required.

Further, the proposed regulations do include an offence for using a system without an approval to use/certificate to use. It is only an offence if the permit to install was obtained and that permit specifically states they must get a Certificate to Use.

EHPA is of the opinion that the regulation should at least implement the practical recommendations from the VAGO 2018 report. It can also look into alternative enforcement options like:

- The requirement for property owners to gain an onsite system compliance certificate prior to sale of property (i.e. recommendation 10 VAGO 2018). For example Councils near the NSW border already receive phone calls from conveyancing agents where this system is in place. This appears to be a workable solution and will motivate owners that are keen to sell their house to address any issues related to their OSWMS;
- Introduce a regulation that focusses on operation, maintenance and servicing of OSWM systems regardless if a permit was in place or not. In other jurisdictions OSWM systems need to comply with their code (e.g. South Australia) or WA (regulation 42, treatment of sewage and disposal of effluent and liquid waste) regulations 1974.
- Other jurisdictions have suggested other tools: e.g. NSW: inquiry into the regulation of domestic wastewater (4.57, page 38 discussion in relation to order section 124 Local Government Act 1993). Victoria could introduce a similar regulation. This regulation can then be used by councils when (failing) OSWM systems are identified during a proactive DWMP inspection or a reactive inspection like a complaint.

EHPA acknowledges that option 2 may be an expensive option for the community and Councils. However, this option directly addresses several of the issues Councils have been trying to deal with for decades without great success (i.e. dealing with legacy issues and giving Councils the chance to raise revenue to recoup costs for the ongoing management of OSWMS). EPA/ DELWP's preferred option 1 (i.e. reduction of status quo) does not address these issues and, therefore, EHPA does not consider this to be an acceptable option.

Issue 2 Recommendations:

2.1 Revise Regulatory Impact Statement (with more input from Councils, water authorities and other key stakeholders).

- Change to option 2
- Examine and clarify enforcement options in regulations;
- Clarify what duties are of OSWM owners under GED;
- Amend proposed enforcement protocol (i.e. issuing and follow up improvement notice)
- Introduce alternative enforcement tools (in particular dealing with legacy systems).

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Issue 3 Introducing a framework that has an increased risk of negative impacts for the community and Local Government

The RIS indicates that the status quo is preferred. EHPA members believe that the status quo is not an acceptable option. Two VAGO reports clearly articulated that the current system does not work.

Our concern is also that by using this RIS not all aspects of OSWM have been properly taken into consideration, as a result the conclusions of this statement are flawed. Consequently there will be poorer environmental outcomes and increased public health risks and this is an outcome that is not acceptable for our members.

Councils are already struggling to comply with their DWMP requirements under SEPP and fund the implementation of their DWMP's. In most cases, no actions are being implemented. These constraints (especially regarding monitoring activities for the ongoing performance of OSWM systems) are well documented in the VAGO 2018 report (page 51, 54-55). Unfortunately, the RIS and this regulation did not address these issues identified in these reports. The proposed regulation is overly complex, it does not clarify the roles and responsibilities of each agency and there is still (or even more) overlap between EPA and Local Government. In the current format councils will still lack the tools to effectively deal with legacy issues.

Because the proposed regulations rely heavily on the EPA to take enforcement action. Is the EPA capable and willing to handle an increased workload (i.e. follow up improvement notices)?

Under the current proposal councils' role regarding ongoing maintenance of OSWM (in particular Aerated Wastewater Treatment Systems) will significantly change. This change is proposed without their input. Councils currently monitor quarterly service reports and annual wastewater samples (based on EPA certificate of approvals).

EHPA is of the strong opinion that the current proposal is not going to have a positive outcome for community and Councils. In one piece of legislation (SEPP) EPA/ DELWP want Councils to be actively involved in the management of OSWM systems (i.e. adopt and implement DWMPs), but on the other hand do not give them the tools to effectively administer their responsibilities. EHPA cannot see how the GED will create clarity for owners and how the proposed regulation can be used to achieve compliance. We see this as a step backwards. EHPA members believe that Councils should have been more actively involved in the reviews of the SEPP, EP Act and regulations with regards to OSWM systems <5,000 litres.

EHPA is also of the opinion that the regulatory impact statement must be revised. As indicated in the VAGO 2018 report this review requires a coordinated, holistic approach. The next RIS should be more thorough and it has to be conducted in consultation with councils, water authorities and other key stakeholders. As a minimum option 2 (enabling a renewal permit to be required at regular intervals) should be revisited. The Regulatory Impact Statement (RIS) did not look at the issues Councils are experiencing on a daily basis in relation to the enforcement around non-compliant OSWM systems. It appears that the costs benefit analysis was overly simplified, it lacked detail and was missing vital data. For example the analysis in the RIS did not quantify potential cost savings related to burden of disease (e.g. prevention of gastro) as the costs of hospitalisation, drugs, and Medical visits were not quantified.

There is experience in this field as a similar approach was used in the Public Health and Wellbeing Regulations Sunset Review: regulatory impact statement (page 82 -83).

The revenue constraints for councils to fund DWMP's is one outcome that must be achieved during this reform. If it cannot be achieved with permit renewals an alternative revenue stream needs to be identified.

Issue 3 Recommendations

- 3.1 Revise Regulatory Impact Statement (with more input from Councils, water authorities and other key stakeholders)
 - Based upon new costing reassess if option 1 is still the preferred option
- 3.2 Set up OSWM committee to coordinate OSWM reform. This committee should be actively involved in the planning and implementation of the new RIS and should have representatives of Council water authorities, EPA and other key stakeholders.
- 3.2 Delay commencement of regulations till new RIS is completed.
- 3.4 Provide additional funding opportunities (e.g. contribution water authorities or introduction wastewater levy)

Issue 4 Increase workload for Local Government (Annual return)

EHPA has noted that the requirement for annual return has been included within the Regulations and we further note that it is only included for the first two years of the regulations. Whilst it is acknowledged that this is a current requirement of the Act we question why it has been included. Councils have not submitted returns to the EPA since the mid 90's when EPA advised us to stop sending returns. If the EPA wishes to recommence the receiving of annual returns from Council's we question the value in only have the provision in place for 2 years as no substantive data would be collected in this timeframe. What is the reason to add this requirement?

If there is value in including the annual return, these needs need to be very clearly articulated.

Additionally it should be noted that most Councils would struggle to provide data on the number of systems that are disconnected. Disconnection of systems would generally occur because a property has connected to a reticulated sewerage service and Councils are not advised when this occurs.

It appears that it would only add to councils' administrative burden without a clear objective.

Issue 4 Recommendations

- 4.1 Delay this requirement until it is clear if this data collection is feasible and useful. Provide explanation of the value of this and how the information is used.
- 4.2 Consider utilising other reporting schemes

Conclusion

The above represents the results of consultation with our members and we thank these members for their input into this submission. It is clear considerable thought has been put into these comments and it is hoped EPA and DELWP will seriously consider the options as described above.

More specific details of members comments can be found in the Appendices 1 & 2.

EHPA looks forward to a continued working relationship with the EPA and DELWP on this issue.

Appendix 1 Loddon Mallee Region

EPA Victoria,
Attention: Director of Policy and Regulation,
GPO Box 4395,
Melbourne VIC 3001

Email: sublegreform@epa.vic.gov.au

21 October 2019

Dear Sir / Madam

Re: Environment Protection Reforms - Submission regarding proposed Wastewater Component to reforms.

It is with a profound sense of disappointment that we provide the following response to the exposure draft of the Environmental Protection Regulations and the Regulatory Impact Statement.

There are hundreds of thousands of onsite wastewater disposal systems in Victoria and onsite wastewater management is highly complex and varied. Yet, these regulations treat the issue with an almost 'one size fits all' solution. The regulations in no way allow for the wide variety of issues that local government regularly encounter or the potentially serious nature of some of the non-compliances.

It is clear that the authors of the regulations are not conversant with the breadth of issues relating to onsite wastewater management. There appears to be a basic assumption that it only applies to single households, however, a system under 5000L/day can include very large commercial and industrial developments. The scope of the regulations needs to reflect the diversity of the types of systems that can be installed.

Local Government have long been lobbying for changes to the onsite wastewater disposal (septic tank provisions) of the Environment Protection Act. It is extremely disappointing that the current proposal is to essentially move the current septic tank requirements into the regulations with effectively '**little to no change**'. In fact there is a **net loss of regulatory tools**. This is the first real opportunity in 45 years to effect real change and the current proposal falls vastly short of what is essential.

The following pages provide both discussion and specific detail on the various shortcomings of the draft regulations.

Appendix 1

If you have queries, please contact either Teresa Arnup, Shire of Loddon on 03 5494 1200 or Jeremy Draper, Mildura Rural City/Campaspe Shire on 0423178136.

Yours sincerely

George Baker
Secretary
EHPA North West Group

On behalf of Mildura Rural City Council, Loddon Shire Council, Swan Hill Rural City Council, Gannawarra Shire Council, Buloke Shire Council, City of Greater Bendigo, Shire of Yarriambiack, Campaspe Shire Council, Mount Alexandra Shire Council.

1. Background

1.1. Historic issues and lack of owner care

Wastewater disposal is seen by householders and businesses as a set and forget process. Once the system is installed they undertake little to no maintenance on their systems. Even systems such as aerated wastewater treatment systems/package treatment plants, that include permit conditions that they undertake quarterly maintenance, are in many cases not being maintained. Many of these systems date back to the early 90's or in some cases the late 80's. The current state of wastewater management has been highlighted as a significant issue by the Auditor General in reports from 2006 and 2010 and numerous studies undertaken by Local Governments across the state highlight the lack of both knowledge and care that owners have for their wastewater disposal. Most householders do not worry about their wastewater system until the toilet fails to flush or water is physically running across the surface of their property (sometimes not even then...). Many historic systems also discharge off site (and were allowed to at the time of installation).

1.2 Domestic Wastewater Management Plans and lack of funding

Councils have been required to prepare Domestic Wastewater Management Plans (DWMPs) since 2005, which identify both the problems and potential solutions. It is interesting to note that this requirement is being retained for *'at least the next 2 years'*, yet there remains no mechanism to fund either the development or implementation of the plans. As Local Government have lobbied in the past, the introduction of an Environmental (Wastewater Management) Levy collectable through Council's rating system is the obvious solution. This would be collectable on all developed properties that are not connected to a reticulated sewer system. The levy would support not only the development of DWMP's but the implementation of the action plans and fits directly with the objectives of the new Act and regulations which is to be 'proactive' not 'reactive'. With no proposed funding stream being provided for DWMPs, the documents produced will contribute little value to the improvement of wastewater management across Victoria as Council's simply do not have the funds.

1.3 Poor consultation process

The consultation process into the development of the draft regulation and the RIS has been extremely disappointing. It is especially disappointing when the issues with the current legislative requirements have been raised frequently over many years with staff from the Environment Protection Authority (EPA). Consulting with only 6 Council's for the development of the RIS is not appropriate consultation when this number represents less than 10% of all Victorian Councils. The lack of suitable consultation for the development of the draft regulations and the RIS with Councils and in particular EHPA (the professional body that represents Environmental Health Officers), combined with the failure to make any actual improvements into the management of wastewater systems across Victoria is extremely frustrating for Councils.

1.4 Regulations are poorly worded

It must also be noted that the Regulations are extremely hard to read and follow, Council Environmental Health Officers are experts in reading, interpreting and enforcing legislation, yet most officers have struggled to extract the specific regulations that relate to permits being issued by Council versus those permits issued by the Authority. Further, extracting the specific enforcement powers is even more difficult, so difficult that it has taken a significant

amount of research to get even the EPA to provide an 'exact' response to many of our questions. The readability of the regulations will impact heavily on the end users of the legislation, not only council staff but home owners, manufacturers and plumbers/installers.

2. Specific issues with draft regulations

2.1 Penalties and lack of enforcement tools

There is NO scope to regulate onsite wastewater systems that do not have a permit (e.g. illegally installed or lost Council records) or systems that have very old permits with inadequate or poorly constructed conditions. In the proposed regulations there is only one offence and that is for not complying with a permit (r33(2)).

It has been suggested repeatedly that enforcement can be undertaken under the General Environmental Duties (GED), however in separate correspondence it has been made clear this is not the case. The following is a quote in an email received from the EPA recently:

"The GED is enforceable against an individual (assuming they are not conducting a business or understanding) by way of a notice (e.g. improvement notice). If an individual fails to comply with a notice, that failure contravenes a separate offence which is criminally enforceable. They are not criminally liable for a breach of the GED in its own right."

The catch is that criminal prosecution for any failure to comply with a notice is a non-delegable power outside of EPA employees- or we cannot delegate this to council officers. So a failure to comply would need to be refer to us for further enforcement proceedings."

To summarize: Issuing a notice can be undertaken by Council. However, failure to comply with the Notice must be prosecuted by the EPA and is a 'criminal' offence. This is not proportional to the type of non-compliance and EPA will not 'prosecute' for failure to obtain a permit to install a septic tank system.

The regulations in their current form actually make it advantageous to the installer NOT to get a permit, as there is no proportional penalty available to Councils to regulate them when they don't do the right thing.

Additionally one of the issues that Local Government has with the current legislation is that the standard statute of limitation (12 months) applies to the offence of installing a system without a permit. Councils often find out about systems 'years' after the installation has occurred. Legal advice has been sought by a number of Councils over the years and if the offence of installing the system occurred more than 12 months ago, the advice is that no legal action can be taken. This is extremely frustrating when the installation has been undertaken by a licenced plumber, someone that 'knows' that a permit is required.

Further, the proposed regulations do include an offence for using a system without an approval to use/certificate to use. It is only an offence if the permit to install was obtained and that permit specifically states they must get a Certificate to Use.

Lastly, there MUST be a tool for dealing with failing onsite wastewater systems that have no permit or have a permit with no conditions (or few conditions). Currently Local Government

are forced to use the Public Health and Wellbeing Act or sometimes the litter provisions of the Environment Protection Act. It is ridiculous we are forced to use a secondary Act when this Act/regulations is meant to regulate this very type of problem. The Environment Protection Act and regulations MUST specifically allow for enforcement in these types of situations.

2.2 Prescribed Period for deciding permit applications.

The draft regulations require Council to make decision regarding the issuing of the application within 42 business days of receiving the application. The regulations do not deal with or allow for delays. In particular incomplete applications cause significant delays. Many applications that are made to Council are incomplete, which requires Council to request further information from the applicant to complete the application. No provision within the regulation is made for the requesting of this information or the stopping of the decision making clock whilst we await the additional information.

2.3 Prescribed period during which permits remain in force.

The regulations are proposing the introduction of a permit expiry date. The proposed timeframe is 5 years. Most Victorian Councils currently issue permits for 2 years, this timeframe is consistent with domestic building permits that need to be started within 12 months and completed within 2 years. The timeframe should be consistent with building permits to assist developers/home owners in the management of their permits.

Further, with the move to the Australian Standards (AS) approval process a number of years ago Councils now also manage the expiry date for AS certification. The current 2 year time frame means that when system certification expires and the systems AS certification is not renewed Councils can easily manage a small number of permits that may be affected by the non-certification of their proposed system. The number of systems that will be affected should the expiry date of the permits be extended to 5 years will increase and will therefore increase Council workloads.

It is also envisaged that the workload for amending permits will increase as the permits nominate the system installer. The likelihood that the developer will want to change from the same installer that they nominated 4 or 5 years ago or that they need to change installer as the person that they nominated 4 or 5 years ago is no longer available to do the job is significant.

2.4 Annual return.

We have noted that the requirement for annual return has been included within the Regulations and we further note that it is only included for the first two years of the regulations. Whilst it is acknowledged that this is a current requirement of the Act we question why it has been included. Councils have not submitted returns to the EPA since the mid 90's when EPA advised us to stop sending returns. If the EPA wishes to recommence the receiving of annual returns from Councils we question the value in only having the provision in place for 2 years as no substantive data would be collected in this timeframe.

Additionally it should be noted that most Councils would struggle to provide data on the number of systems that are disconnected. Disconnection of system would generally occur

because a property has connected to a reticulated sewerage service and Councils are not advised when this occurs.

2.5 Fees for council issued permits.

It is noted that the current proposal is to move away from Councils setting the fees for permits to a prescribed fee process.

This proposal is not supported by Councils as the proposed fee structure is not fair and equitable for our ratepayers.

The current proposal of a minimum fee to cover the first 4.1 hours and then additional fees based on the amount of hours required is unjust. The minimum fee (4 hours) may cover the costs associated with processing a permit that is within a 20 minute drive from our office however it fails to go anywhere near covering the cost for a permit that is 1 to 2 hours drive from our office. Councils do not set fees based on a ratepayer's location; fees set by Councils are averaged out so that the cost of issuing permits is shared by all permits.

The approval process from Council to Council can vary however on average the approval process for a permit would include:

Approval Step	Time allowance
<ul style="list-style-type: none"> ◆ Application is received by Council. <ul style="list-style-type: none"> a. Payment is received by cashiers. b. Application is scanned and lodged into Council's record management system. c. Application is lodged in Council's wastewater management system. 	30 mins
<ul style="list-style-type: none"> ◆ Desktop assessment is undertaken by Council officer. Length of time will vary depending on application complexity including if it has an LCA 	30 mins to 1hr (possibly longer)
<ul style="list-style-type: none"> ◆ Site visit – application 	40 mins to 4 hours (return trip and depends on size of municipality)
<ul style="list-style-type: none"> ◆ Permit Issued 	30 mins
<ul style="list-style-type: none"> ◆ Site visit – during installation of system 	40 mins to 4 hours (return trip and depends on size of municipality)
<ul style="list-style-type: none"> ◆ Site visit – final inspection of system once installation is complete 	40 mins to 4 hours (return trip and depends on size of municipality)
<ul style="list-style-type: none"> ◆ Issue Approval to Use 	30 mins
Time taken	4 hrs to 14.5 hours
Please note additional time can occur at any time in the form of: <ul style="list-style-type: none"> ◆ Requesting, receiving and assessing additional information ◆ Re visiting site if the system is not installed correctly ◆ Contact with the applicant when the permit is due to expire 	

From the above simple example it is possible for a permit to be issued and completed in the 4 hours that has been allowed for in the proposed fee. That is if the permit is simple, straight forward, all the required information is included in the application and most importantly no

more than a 20 minute drive from the Council office. The reality is that the number of permits that are a 20 minutes from the office for rural municipalities is extremely limited. This means that Council will have no choice but to charge a different fee to ratepayers based purely on their location in relation to the Council office.

The other option open to Council would be to charge the base fee when a permit is applied for and then track all hours and charge the difference between the base fee and the actual cost of administering the permit when the approval to use is issued. This would actually increase the cost as additional administration hours will be required to track the time, calculate the outstanding fee and raise the account.

Given that the proposed expiry for the permit is 5 years this will mean that the Council will carry the cost for up to 5 years and that some but not all ratepayers will need to pay to receive their approval to use their system. This again is not an equitable for fair system

We would be happy to see a fee that falls in between a simple application and a complex application, based on the example above this would be a fee that covers around 9 hours, based on 6.34 fee unit per hours (as given in RIS) this means the fee would be \$824.52

2.6 Additional fees

No provision is made within the Regulations for the charging of additional types of fees which is extremely limiting and will result in Councils charging the same fee regardless of the amount of work required. Most Councils would have the following additional charges:

- a. Permit Alteration Fee – a fee to reflect the cost of reissuing a permit following a minor change such as change of plumber or system type (generally one type of AWTS to another)
- b. Alteration to Existing System – this fee is charged when someone with an existing system is adding to the system due to alterations or additions to their home.
- c. Inspection Fee – this fee can be charged when more than 3 inspection are required on a system due to issues with the installation. Issues can include wrong system being installed, wrong location, wrong trench depth, use of inferior materials, visiting the site on request of applicant to undertake final inspection and the installation isn't finished.

2.7 General Environmental Duty (GED)

We reiterate that as an enforcement option for onsite wastewater management, it is **not suitable, not proportional** or likely achievable.

Whilst Council can issue a Notice under the GED, the penalty for non-compliance is criminal prosecution and can ONLY be prosecuted by the EPA.

Submission on EPA Reforms to Onsite Wastewater Management Regulations

Introduction

We are greatly disappointed in the regulations proposed for managing onsite wastewater by EPA. It appears that EPA have diluted the purpose of the new Environment Protection act 2017 which states that the Act is for the protection of Human health and the Environment from pollution and waste. Further, another purpose provides for the issuing of several enforcement tools, which do not apply for wastewater with the only penalty being the use of a system without permit to Use.

There has been no consultation with Local Government, especially local municipalities in the western/grampians region, who deal with onsite wastewater issues on a daily basis. The Councils who have been consulted are from the metropolitan fringe, three regional city councils and one rural city, which is hardly representative of the overall issues relating to onsite wastewater management across the state. Further, rural councils do not appear to have been given the opportunity to contribute to the development of the new act or the regulations.

There is also very little time in order to provide feedback on these changes, which are substantial, this is not the review of a sunset set of regulations but a complete change in focus and structure of the legislation. EPA needed to allocate more time to ensure that the process was not rushed and that all points of view have been considered.

The proposed regulations do not meet the expectation of our Councils for the effective management of onsite wastewater and in fact reduce the legislative tools available to mitigate the risk posed by onsite wastewater to humans and the environment. This is the first opportunity in almost 50 years to revise the framework for onsite wastewater management and regulation and the proposed framework does not adequately address the risks involved in this field.

Of particular concern is the financial changes being proposed to permit fees, which will lead to a reduction in funds and a further reduction of existing workforce resources, that some of our Council have spent considerable time and effort building up. The current efforts focus on a preventative approach to the management of onsite wastewater within the municipalities, often in areas of Potable water catchment, which is consistent with the purpose of the new legislation however is not supported by the proposed regulations.

Overall, the legislation is complicated and difficult to read with numerous references to external documents and definitions, to the point of being unreadable and not useful. Reduction of penalties and the lack of staged enforcement tools set officers up to be unable to take action to remedy issues of danger to human health arising from onsite wastewater. Further, the regulations provide no powers to compel individuals to obtain a septic tank permit and install an onsite waste water system. The use of other legislation, for example the Public Health and Wellbeing Act 2008, to enforce the requirements of this Act is unacceptable, especially when there is the opportunity to create regulations at this point in time to address the shortcomings in the previous legislation.

Option 2 included in the Regulatory Impact Statement, Chapter 7, while not perfect and in need of further work, is closer to an acceptable outcome due to it maintaining the current legislative framework and building upon it to ensure that wastewater management is closely monitored and managed. However the figures quoted, again from metro fringe, regional and one rural Council are not representative of conditions in the western/grampians region and it has been established through audits from Councils within the our Region that the number of unsatisfactory systems would be closer to 2-5%. This highlights a severe exaggeration of the failure rates and subsequent costs

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that has led to Option 2 being dismissed. Further, the assumption of a 100% compliance rate is unrealistic and unnecessary when a risk-based approach can be taken to reduce the risk of harm to human health and the environment. If a risk based approach is taken then the 100% compliance target would decrease to a safe risk level and the associated costs to the duty holder would also reduce, making Option 2 feasible.

Please find below particular concerns regarding the regulations by section.

Option 1 versus option 2- 5 year permit expiry

Option 1 the preferred option in the RIS considers permit to construct, install and alter up to 5 years with a permit expiry. This option relies on the operation & maintenance of septic systems to be regulated through the GED. This will not work in practice. There is no capacity for councils to issue ongoing permits for domestic on-site systems. There is scant information included in the RIS about assessment of the options, and the Grampians Councils believe that the figures used to assess Option 2 are not representative of the state's figures. These figures do not reflect the data from Councils in the Grampians region, and Councils were not consulted or requested to provide figures that provide a representation of their domestic waste water systems. We believe there is a flaw in the decision-making process due to the analysis of incorrect and scant data, and that a correct and proper analysis needs to be undertaken with data that is representative of a number of different Councils i.e rural, semi rural; and costings undertaken, both in terms of regulator costs and the risks to the public.

- The flaw in the decision process is that analysis has been made on data that is not representative of a range of different Councils (only 6 including per-urban fringes) and therefore the conclusions are not accurate.
- On page 75 on RIS, the estimated figures of 60-80% of existing systems that may require upgrade. This is a gross overestimation. Upgrade \$10000- our figures would not reflect this.
- Established audits from the Councils within the Grampians region indicate these figures are **likely to be 2-5%**.
- Figures of failure and number of permits from areas where there are potable water catchments need to be taken into consideration.
- There is exaggeration of failure rates and subsequent costs leading to option 2 being dismissed.
- Criteria 50% in table severely swayed if the correct costs considered.
- Risk based approach needs to be considered- this will not be the case with option 1 .
- Require a proactive approach as per intention of the legislation- this will not be the outcome with option 1.
- Options need to be costed and analysed with true and correct figures- this may be the most cost effective and appropriate risk management practice.

Permit Expiry Date

The regulations are proposing a permit expiry date of 5 years. Currently most Victorian Councils issue permits for 2 years. This is consistent with domestic building permits that need to be started in 12 months and finished in 2 years.

- Permit expiry period 5 years.
- Currently generally issue permits for 2 years.
- Should be consistent with building permits- consistency required.
- As certification 2 years frame- councils can currently manage with permits but this may increase with a 5-year permit period.
- Increased workload as developer changes installers from that nominated 5 years previously
- Draft regulations require councils to make decisions within 42 days regarding issuing of application of receiving it. This does not allow for delays particularly with incomplete applications- this is a common occurrence. A mechanism to deal with requesting further information around applications is required.

Legislative Reform

The lack of penalties and enforcement tools for Councils is poor, ineffective and the GED although applying to landowners, will not be enforceable against non- business operators of domestic on site systems. The changes to the Regulations are an opportunity to strengthen the tool kit for Councils to assist in preventing public health and environmental issues, that has been missed.

The issues are:

- Limited and reduced tools for Councils and restricted.
- Contrary to recommendations in VAGO report.
- VAGO report – no mechanism to ensure that property owners and or tenants understand their specific maintenance responsibilities for their systems.
- Does not strengthen statutory requirements outlined in VAGO report recommendations.
- No power to enforce when there is not a permit for an onsite waste water system.
- Powers diluted, if a notice issued by Council however Council DO NOT have the powers when there is failure to comply with the notice.
- Regulations - only one offence and that is not complying with a permit (r(33(2))
- Powers of entry do not cover Council officers – easily fixed by referencing council officers in powers of entry section.
- There is NO tool for dealing with failing onsite wastewater systems that have no permit or have a permit with no or few conditions.
- It is currently a reactive system – It is not consistent with the new direction of the EPA to taking a preventative approach. The regulations are not consistent with this over all approach.
- The new structure will limit the service that Councils will be able to provide that we currently provide by being proactive and avoiding potential issues.
- Overall greater risks by reduced and inadequate tool kit for Local Government.

General Environmental Duty (GED)

It has been suggested that enforcement can be undertaken under the GED, however in other correspondence and information from the EPA this does not appear to be the case.

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- It is unclear about the GED being able to be enforced on individuals. It would need to be enforceable on individuals if this is to be relied upon, not just for waste water but for noise and litter.
- Who is the duty holder and how and where is this defined?
- The Power with EPA and will Delegation to Council occur. This is not clearly answered.
- It appears that only the EPA can enforce the GED, this would not work for onsite waste water issues

LCA requirements

- Should be a requirement of a permit application with a structure on the minimum standards, accreditation and inclusions in report.

Fees

In the RIS, these will be prescribed by the EPA with a maximum fee proposed based upon a time calculation. Councils do not determine fees based upon a rate payer's location, but the fees are averaged to ensure cost of issuing permits is shared by all. This fee structure will ultimately contribute to poorer public health and environmental outcomes as outlined below:

- No consultation on this significant impact of fees for Councils that will greatly impact Councils – fee structure is unsatisfactory.
- Fees are not stipulated in other major pieces and legislation, eg *Food Act 1984 & Public Health & Wellbeing Act 2008*, there is not a precedent for this
- Fee structure not fair and equitable and difficult to apply
- Seem to be based on very rough calculation with minimal if no consultation
- Data not representative of Councils state and therefore the conclusions are not workable.
- Additional unnecessary complexity and burden on Council, extra administration hours calculating and managing fees, dealing with fee disputes and queries on the fee breakdown
- Complexity-- time taken to explain fee set up and the owner/duty holders right to have it reviewed- will further impact Council
- No opportunity to address complexities, particularly Councils located in drinking water catchments, eg additional burden posed by their Councils around regulations of DWMP and expectations of Water Authorities.
- This will result in reduced income that will impact on ability for small Councils to deliver, educate and comply with regulations, and ultimately impact on the community particularly in rural and regional areas.
- Education is part of the Council's role currently- this is not costed into the fee structure
- Councils already severely restricted in rural communities.
- Will disadvantage people who live further from council offices. eg rural Councils require on average 2 hours round trip, distance not considered.
- Was a proper cost recovery considered as part of the RIS, because the options do not reflect this?
- Will there be consideration around separate fees for alteration of existing systems or minor amendments to a permit. Again, Council and rural communities disadvantaged
- Time based not site based.

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- One size fit all, and complex not simplified for duty holder. Based upon 6 Councils only, not reflecting different soil profiles, land capability, water catchment areas and rural distances.
- Reducing capacity of LG, planning referrals/LCAs/follow up maintenance reports /life of system.
- Lack of funding through fees will impact those councils in catchment areas to deliver DWMP actions.
- Ultimately affect future development in Municipalities- not intention of the legislation

Understanding of Regulations

The regulations are difficult to read and follow in a clear and logical manner.

- The regulations need to reference that systems are for less than 5,000L systems.
- Regulations reference too many separate documents and definitions., tables and schedules are complex and are not user friendly.
- Difficult to navigate and interpret despite the role of Environmental Health Officers understanding, interpreting and enforcing a of variety of legislation.
- Impact heavily on other stakeholders to understand including installers, plumbers, manufacturers, commercial and home owners.
- It is difficult to provide feedback when the documents that are referenced do not exist.

Annual Return- add more

We acknowledge that this is a current requirement of the Act however this has not occurred for some time since EPA advised to cease reporting.

- There is no explanation of the value of this and how the information is used.
- This information is not made available to Local Government and no reporting of this data to Council
- Consider to utilise other reporting schemes
- Councils have not provided this in the past, it has not been requested, and a reason has not been provided about retaining in the legislation. There is only comment regarding a two year period?

General comments

- No reference to relevant Australian Standards
- There is a lack of staged enforcement tools – something in between compliance and prosecution with no course of action against persons that do not hold a permit
- The proactive work as a result of Domestic Wastewater Management Plans would disappear if the fee structure is introduced as there will be limited if no funds to conduct these activities. This will seriously impact on existing positions, resources and knowledge.
- Lack of funding through fees will impact those councils in catchment areas to deliver DWMP actions. A flow on effect that will severely affect future development

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- Amendment to permits over the 5 years – it is not clearly outlined how this will be managed and Councils require consistency with other functions within Councils around planning and building permits.
- Code/guidance – Councils need to be included in the development of these new documents
- There is no documented definition of Duty Holder
- State of knowledge definition- where is this defined?
- The regulations are not consistent with the overall objectives of the reformed act and dilutes it down.
- VAGO report- - the recommendations of this report to review the current septic tank regulatory framework, including legislation, policy guidance, and to clarify roles and responsibilities and enforcement powers for local governments, water authorities and water companies has not been implemented effectively by the proposed changes in the regulations outlined in the RIS.

OTHER NOTES- where are these inserted??

- *DWMP- Water Authorities- for 2 years*
- *80- 100 % - water authorities approval*
- *Owner to do report every 5 years*
- *LG-perform random audits*

Conclusion

While we understand that a restructure is necessary, we believe it should be to the benefit of the all of those involved including Local Government. The change in legislation should complement the hard work of some Councils in managing the risks to human health and the environment and build on this work to ensure that risks can be adequately addressed and managed by Council.

Unfortunately, we find it difficult to support any of the proposed changes and the reliance on the GED, which is not enforceable by Council, in relation to onsite wastewater management. It is clear that EPA are not across the breadth of issues relating to onsite wastewater management and the scope of the regulations need to reflect the diversity of the types of systems that can be installed under the 5,000L limit and the diversity of system types and complexity of local geographical features which contribute to the disposal of wastewater onsite with one size not fitting all circumstances.

Council would be eager to participate in improving these proposed regulations, providing their past and present experience with onsite wastewater management, to achieve positive outcomes for the community and prevent risks to Human health and the environment