



## **ISSUING PERMITS TO BURN TO BRIGADES IN RAILWAY CORRIDORS**

### **1. Operational railway corridors leased by private companies**

The MFPO of the municipal council should issue the permit in this case, as the management and control of the corridor resides with a private company.

The Chief Officer could also issue the permit in this instance.

### **2. Closed lines, railway sidings and station grounds managed or controlled by VicTrack**

The management and control (key aspect) of these closed lines resides with VicTrack - a public authority. The fire prevention officer of VicTrack should issue the permit in this case.

The VicTrack Fire Prevention Officer cannot delegate his/her legislative responsibility for issuance of permits to anyone else.

However, the Chief Officer may issue the permit in any instance where the fire prevention officer of the public authority requests it.

### **3. Railway sidings and station grounds owned by VicTrack but managed by third parties, i.e. private companies**

The critical part of this question, as in all discussed so far, is who manages and controls the land in question.

- a. If the third party is VLine, they are a public authority and their fire prevention officer should issue the permit.

As was the case for VicTrack, the Chief Officer may issue the permit in any instance where the fire prevention officer of the public authority requests it. (CFA Act s38(d))

- b. If the third party is other than a public authority and leases the land from VicTrack, then the MFPO of the municipal council should issue the permit. The Chief Officer could also issue the permit.
- c. If the third party only had a licence to use the land, the question would have to be addressed on a case-by-case basis, as the third party may or may not have management and control of the land.



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### **4. Walking tracks/Rail Trails on former railway lines owned by VicTrack and managed by Committees of Management**

Committees of management in this case are appointed under the Crown Land (Reserves) Act 1978 and are public authorities for the purposes of the CFA Act.

The committee of management is a public authority and therefore its fire prevention officer may issue the permit to burn, or request that the Chief Officer do so.

(Remember that the Chief Officer may issue the permit in any instance where the fire prevention officer any public authority requests it, but does not have to.)

### **Other relevant considerations**

1. It is not legally valid or permissible for VicTrack's Fire Prevention Officer to authorise MFPOs to issue permits on their behalf. The CFA Act gives the power to issue permits to the fire prevention officer of the public authority, not to the public authority itself. There is no corresponding provision for the fire prevention officer of a public authority to delegate any of their powers, as exists for MFPOs.
2. For all the situations referred to above, it is worth noting that the permits to burn must comply with s38(2) of the CFA Act, and therefore must be in or to the effect of the form prescribed in regulation 106 and Schedule 12 of the CFA Regulations 2004. This means that a simple letter of permission will not suffice.
3. Persons who sign permits to burn must be appropriately appointed and/or delegated, for those permits to be valid. This means that fire prevention officers of a public authority must have a document that proves that they have been appointed to that position.

Please note that this is not meant to be an exhaustive document or to represent formal legal advice. This overview is provided for your information, awareness and general guidance. It should not be used or relied upon as legal advice, although every care has been taken to ensure that the information provided is accurate.

Any matters requiring legal advice should be clarified with a qualified legal practitioner. Up to date copies of the actual legislation can be accessed and downloaded at no cost from the Victorian Legislation and Parliamentary Documents website: [www.dms.dpc.vic.gov.au](http://www.dms.dpc.vic.gov.au).