

Economy and Infrastructure Committee
Parliament House, Spring Street
Via email: airpollutioninquiry@parliament.vic.gov.au

23rd April 2021

Dear Committee Members

Thank you for the opportunity to submit to this inquiry into Health Impacts of Air Pollution in Victoria.

Overview

I am an agricultural advocate and farmer living in the hub of Victoria's power generation in Latrobe Valley. I advocate for good governance and mining reform to inform good planning for our future well-being and prosperity. Too many times poor planning decisions and policy from all levels of government are contributing to significant negative consequences for health and environmental degradation in Gippsland as well as economic, legal and social impacts.

I have been active with all levels of government for over a decade as well as State and Federal Representations:

- Presentation by concerned regional leaders 2016
"BALANCING ECONOMICS, ENVIRONMENT, HEALTH, WATER AND FOOD SECURITY"
- Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014
- Attended National Pollution summit
- Co-Design Panel working with EPA to design a new air modelling network.

What can be done [controlled] to minimise impacts first needs government agencies to identify their failings from their regulatory obligations and for 'others' to be listened to before the impacts become too severe or, worst, too late with the resultant health impacts from exposures to polycyclic aromatic hydrocarbons (PAH), volatile organic compounds (VOCs), silica, asbestos, arsenic, mercury, lead, PM_{2.5} & PM₁₀ and radionuclides as toxic air pollutant examples.

These toxic air pollutants should not be part of the air we breathe, but they are in significant concentrations. I contend that it is regulatory failure that has allowed industry to only apply minimum statutory obligations, at the least, in addressing their emissions and release of toxic contaminants to the environment.

Some examples of numerous VAGO reports have identified and made many recommendations over the years to ensure departments and agencies are more

compliant and effective. But it is also involvement by advocates and community group that have highlighted, but not limited to the following:

- legislative & regulatory loopholes – deregulation, cutting red and green tape
- agency mismanagement
- conflict of interests
- auditors not being fit for purpose
- lack of agency integrity of compliance officers
- outdate EES process
- lack of whistle-blowers protection,
- political interference in agency work favouring bureaucratic outcomes over scientific data
- lack of relevant Australian standards being updated,
- ignoring state of knowledge
- VIC EPA not using USEPA/ATSDR toxicology tables for comparison assessments

Not surprising then the Victorian Auditor-General Office (VAGO) 2012 report *Effectiveness of Compliance Activities: Departments of Primary Industries and Sustainability and Environment* (VAGO 2012) was damning on audits of each departments functions.

On a revisit to the above recommendations, *VAGO Responses to Performance Audit Recommendations: 2012–13 and 2013–14*¹ Earth Resources Regulation (ERR) sat at the top of the list for inaction, specifically, 'made limited progress'. The Mining Department under many guises to the present day is one of the oldest departments in the history of the colony and then federation. You would think after at least 170 years they would have got their act together to preventing harm to our human and environmental health. Unfortunately, the answer is no with their irresponsible and negligent behaviour continuing to this day, condoned by successive governments and tolerated (through inaction) by other so-called responsible authorities.



¹ <https://www.audit.vic.gov.au/sites/default/files/20151208-PA-Recommendations.pdf>

The irony is with EPA liking my tweet.



EPA Victoria and 2 others liked your Tweet

After challenging Gippsland EPA last week, was asked what I would do if I worked at EPA>reply-"I would be a whistle blower & probably get the sack"
What I should have said is "do my job properly with integrity & hold those to account who don't" @EPA_Victoria

On dealing with this same complaint, I received the following advice.

← RE: Unacceptable response to Yallourn Power Station pollution complaint

🕒 You replied on Mon 7/09/2020 10:24 AM

SC Stacey Clark <[redacted]> Fri 4/09/2020 10:32 AM
To: You

Good morning Tracey,

Thank you for your email. In accordance with EPA's Compliance and Enforcement Policy, EPA adopts a risk based approach that uses science and intelligence to assess the risks in terms of the likelihood of the risk occurring and the potential impacts. EPA remains focused on carrying out our regulatory functions and essential regulatory work. This work includes:

- Responding to **high priority** pollution reports
- Carrying out compliance and enforcement activities, including through inspections for **high** risk reports and alleged illegal activities
- Providing environmental and public health advice, including to emergency services
- Continuing clean up of **high** risk sites
- Air quality monitoring
- Regulatory approvals
- Waste crime prevention

It doesn't take any degree in science or acumen to understand that a high priority started off as a low priority that was ignored!!!

Mining is one of the single most polluting industries throughout Victoria responsible for significant legacy air, soil and water pollution with not one scrape of abandoned mine land adequately rehabilitated. Rather, some are turned into toxic dumps because they were so poorly managed and ignorant to the reality of radioactive mineral sands mining with the full scope of toxic contaminants released to the environment. Illuka's Douglas Mine² is a wasteland and example of how incompatible our planning scheme objectives are with mining. As a land use, mining is given priority rights under the MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) ACT 1990 and accompanying regulations while holding an underserved economic status (in our modern economy) higher than water and land. These sorts of reports contain all the platitudes currently served up and shows that the 'regulation' is pretty well drawn up to a predetermined format.

The current Fingerboards Mineral Sands project by Kalbar in East Gippsland is ripe for dispersion of air pollution from radioactive and heavy metal contaminants over the community and valuable horticultural industry with an apparent indifference from

² [https://www.iluka.com/iluka/media/website/douglas%20documents/hrcc-planning-permit-15-105-douglas-mine-pit-23-emp-\(endorsed\).pdf](https://www.iluka.com/iluka/media/website/douglas%20documents/hrcc-planning-permit-15-105-douglas-mine-pit-23-emp-(endorsed).pdf)

Department of Health and EPA backed up by accepted misleading consultants' reports undermining the risks. WorkSafe Victoria are not even involved. This is a form of 'regulatory capture' even though 100 tonnes of carcinogen will be sitting in a paddock appears to be of little concern. This project will be the real test if the government are sincere in their efforts to prevent human health impacts and environmental degradation.

When EPA expect breaches of the State Environment Protection Policies (SEPPs) in all mining projects, meaning they expect pollution but that it must be 'acceptable' pollution then sometimes government would be well advised to simply say "NO".

This is how you act on what you can control!!!

(a) [identify state-wide practical, real-time, cost-effective mitigation strategies;](#)

I am struggling to find strategies to prevent or minimise air pollution that are being implemented which work for real time reduction in air pollution. Policy directives from relevant departments demonstrates that the siloised and fragmented nature of all levels of government and institutions prevent cooperative cross/interdepartmental and national management of industry and the economy. This is evident in lack of compliance by government itself to perform legislative reviews of their designated portfolio responsibilities. Therefore, enforcement of heavy industry has been found wanting so regulators have enabled air pollution to be imperfectly identified and managed.

Risk Management Matrices

Risk Matrix reports can cleverly distort the actualities of any resource project proposal. They are subjective, simplistic, have elements that are not measurable all the while providing a mechanism for others to conveniently box a known risk or a potential risk with a couple of disclaimers in that '---' was not considered.

What the risk matrix does not reflect is the crucial input data for end parameters and modelling as an example. So, how does a risk matrix ensure the professional advice/consultant reports/terms of reference will all lead to credible and accurate data collation? **It cannot.**

*Limitations of risk matrices (2018)*³

*Risk matrices have many limitations and are not a panacea for all ills. **In the hands of the inexperienced, the biased, or individuals with an agenda, they can, of course, generate misleading ratings.***

Yet, it is to risk management that government project decision-making is applied and clearly fails.

³ <https://www.juliantalbot.com/post/2018/07/31/whats-right-with-risk-matrices>

EES Process

On review and in consideration of the Victorian Auditor General's 2017 Review of the Environmental Effects Statement process in 2011⁴, Victorian Government Ministers are depending on the application of a deficient environmental standard process to assess assessment polluting project feasibility. Victoria's EES process is not current, not fit for purpose and certainly not reflective of community expectations and values.

The EES Parliamentary Inquiry in 2011 made 50 recommendations to overhaul the Environment Effects Statement process and, according to a 2017 Auditor-General's report⁵, none of the recommendations about the process have been implemented.

Past reviews

*Since 2000, two reviews and a Parliamentary inquiry have focused on the EE Act and the EES process. They found the legislation and associated EES processes to **be costly, and lacking clarity and transparency.***

*Between 2000 and 2013, successive governments committed to reforming the EES process, **yet no significant legislative changes have occurred.***

Findings - Improving the EES process, Legislative reform

The most recent reform activity occurred following the 2011 Parliamentary report Inquiry into the Environment Effects Statement Process in Victoria. The Environment and Natural Resources Committee concluded that Victoria's environmental impact assessment system was not meeting its objectives. The committee recommended extensive legislative reform to increase certainty, reduce costs and shorten time frames. Its 50 recommendations detail the attributes and workings of an effective environmental impact assessment system. The Parliamentary report identified issues raised by witnesses and in written submissions about the EES process, including:

- the lack of detail in the EE Act and uncertainty of the status of the Ministerial Guidelines made under the EE Act*
- the non-binding nature of the minister's recommendations and conditions*
- barriers to public participation*
- the need for more robust monitoring and auditing arrangements.*

In response to the inquiry, the former government committed to reforming the EE Act and EES process...The government agreed to the policy reforms but in late 2013 decided not to proceed with the proposed reforms. It did not provide reasons to the public or the department for discontinuing reform efforts.

⁴ <https://www.parliament.vic.gov.au/303-enrc/inquiry-into-the-environment-effects-statement-process-in-victoria-sp-515>

⁵ <https://www.audit.vic.gov.au/report/effectiveness-environmental-effects-statement-process?section=>

As low as reasonably practicable (ALARP)

The reliance on the ALARP approach to risk management provides no comfort as it effectively allows the proponent to decide what to them is an acceptable risk given the finances available. This is a very dangerous tactic that is abused by a proponent and condoned under regulation by legislation.

'Another consideration of what constitutes acceptable risk is to aim to not expose the public to a level of risk greater than is commonly accepted, whether knowingly or not, in the normal course of their lives.' KALBAR consultant comment p27 Appendix A003 Geotechnical Assessment

To reduce air pollution from industry should ALARP be the defining consideration or rather, should the aim be ALARA (as low as reasonably achievable) or World's Best Practice. Add cost-effective provisions to the mix and the capacity to allow industry to distance themselves from stricter air pollution measures is allowing industry project development to proceed NOT on World's Best Practise. Existing industries use excuses on why modifications cannot take place backed up in regulation under the ruse of the term 'cost effective', therefore they receive exemptions from the likes of EPA. Yet, the principal objective of pollution avoidance is swept under the carpet and this very simple strategy, promulgated by industry to reduce red and green tape burdens is another enabler of toxic pollution impacts to the community and environment.

Cutting red and green tape and promoting deregulation

Another strategy failing the community on pollution control is the cutting of red and green tape and deregulation which is the greatest enemy to protect the health of the person and environment. Under these two façades to increase economic productivity, has air pollution increased or decreased?

Has deregulation meant greater transparency in self-reporting when the National Pollution Inventory is just industry supplying estimates?

Then heavy industry project development uses this data to compel government why more polluting industry can enter a geographical airshed in the absence of adequate monitoring.

So, I would say the only strategies working are the loopholes in regulation and condonement of these by the relevant ministerial portfolios.

In the absence of cross-departmental policy driven strategies to understand the full cumulative impact, in consideration of externalities, government will continue to lead our communities and environment to the same end even with full scientific knowledge of how, where, why and what pollution entails.

(b) determine to what extent these strategies are ensuring that Victorian air quality continues to track towards meeting or exceeding current international best practice standards and is enforced

These coverups [inaction] and department failures of the past has left a significant environmental legacy for our rural and regional areas so how do the government manage that?

EPA's coal licence review is the most current and predominant example of "considering community concerns" but, in reality doing little to reduce the air pollution by all the strategies noted above.

Until all of the above are addressed government is not meeting our human right to clean air nor are they able to ensure industry comply with international best standards.

(b) determine the impact of economic and population growth on air pollution and health outcomes;

Economic growth in any geographical airshed involves an increase in industry with the associated increased consumption of non-renewable resources equating to higher levels of air, land and water pollution. Air pollution goes hand in hand with industry development yet all we have is monitoring to tell us so while the all-important standards and best practice lag behind or not enforced.

The increased cost burdens of air pollution are borne by the taxpayer for children/adult health impacts for a range of mental function and cardio vascular issues (health expenditures/ labour productivity), degradation of the environment and historical/cultural infrastructure, produce contamination (agricultural crop yields/reduced export capabilities), decreased ecosystem services, biodiversity loss and water contamination.

Wet and dry deposition from air pollution to land and water occurs when compounds of various types of air pollution build up in the airshed or on land surface through rain, clouds, snow, fog, or as dry particles. These include acidic deposition, excess amounts of nitrogen and heavy metals (including mercury).

With so much data about the negative implications of air pollution on the local and regional economies these external factors are ignored in crucial planning provisions, by local policymakers and project decision-making, specifically on the cumulative effects in any geographical airshed that are all irresponsibly managed.

If this inquiry fails to adequately address the toxic contribution of contaminant pollution by mining to the state and consequential cost liabilities for health & environmental damage this the committee would have failed.

Mining - our findings suggest that mining operations play an important but underappreciated role in the generation of contaminated atmospheric dust and aerosol and the transport of metal and metalloid contaminants, and highlight the need for further research in this area. The role of mining activities in the fate and transport of environmental contaminants may become increasingly important in the coming decades, as climate change and land use are projected to intensify, both of which can substantially increase the potential for dust emissions and transport⁶

(d) strengthening commitments across all Victorian Government portfolios to reduce air pollution and minimise the impact on health of the Victorian population and environment;

This question exists because government know their existing strategies are not working. Economic development cannot be viewed in the absence of sound environmental policy for without a healthy environment you cannot have a healthy economy. Government needs to evaluate their own criteria and simply assess what, where and how pollution is impacting human and environmental health and work out what parts are controllable. All my examples should have been controllable, yet they were not. Only in seeing the fault how it occurred can all government departments, collectively, enact positive change and reduce the huge cost burdens to the state from pollution.

Only through examples can we see where the fault lies as all we have is the reliance on bureaucratic processes to safeguard our human health and environment. If government cannot get it right what hope has the person got to be protected.

(e) any other related matters.

I believe there is no genuine effort to improve public safety, enact change, provide legislative weight to non-compliance or make department heads accountable. The total failure of Earth Resources Regulation (ERR) is a classic example proving the mining industry is not accountable & transparent.

Private companies make huge profits from mining until the resource is depleted, then hand back the abandoned pits to the State to deal with the ongoing pollution for many decades. Private industry profit and public purse tries to fix the unfixable. Yet, prior to the end result ERR and relevant ministers failed in their ministerial portfolio responsibilities and statutory powers.

⁶ A Review on the Importance of Metals and Metalloids in Atmospheric Dust and Aerosol from Mining Operations <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3418464/>

The 2015 reference document (02015/35469) by then Energy Minister, Hon Lily D'Ambrosio, on a *STATEMENT OF EXPECTATIONS FOR THE REGULATION OF THE EARTH RESOURCES SECTOR* notes -

Role Clarity

Earth Resources Regulation will work with various regulators involved in the earth resources sector to deliver on its regulatory obligations consistent with good regulatory practice.

I expect Earth Resources Regulation to provide a clear statement of the roles and responsibilities of the various regulators involved in the earth resources sector to reduce the scope for inconsistency in decision making between the different regulators.

I expect Earth Resources Regulation to become a contemporary regulator with systems that ensure proportional, consistent and justifiable decision-making, that are underpinned by transparent, timely processes and capable people.

Risk-based strategies

I expect you to implement a risk-based approach to managing compliance responsibilities so that you take all reasonable steps to minimise and manage risks from earth resources activities, while acknowledging that the regulator can never eliminate all risk. You should draw on the expertise of specialist advisers including the Technical Review Board as a sounding board in identifying and managing risks.

Yet, in 2020, VAGO supplies another audit report, Rehabilitating Mines, damning Earth Resources again showing a clear indifference by ERR to any responsible action undermining all current and previous Ministers. However, what role have these Minister's also played to allow the department to be so incompetent?

This review also need to consider a whole new way to monitor industry pollution as what currently exists is ineffectual to protect those people closest to the source.

ESSO Longford Gas Plant is another example of inadequate monitoring of a Major Hazards Facility, yet no monitoring exists in the area. Numerous spills with WorkSafe Victoria asleep at the wheel.⁷

Regards

Tracey Anton

⁷ <https://www.gippslandtimes.com.au/story/1197799/something-smells-at-gas-plant/?cs=1828>