

Snapshot: Investigation into Environment Protection Authority decisions on West Gate Tunnel Project spoil disposal

The Case

In December 2015, the Victorian Government announced it would oversee the construction of the West Gate Tunnel, an alternative route to the West Gate Bridge linking Melbourne's CBD and the west. Building the new freeway required tunnelling and extensive excavation of soil through Melbourne's western suburbs, including areas of previous heavy industrial use. In June 2019, PFAS – a class of toxic chemicals – was found in tunnel groundwater during environmental testing. The Environment Protection Authority ('EPA') subsequently approved, revoked and then re-approved three Environment Management Plans, allowing sites in Bulla, Bacchus Marsh and Ravenhall to receive the spoil generated by the tunnel works. This was the subject of community protests, court action and complaints to the Ombudsman, which prompted our office to investigate the EPA's decisions.

Key Findings

- The EPA's decision to approve Environment Management Plans for disposal of contaminated spoil was environmentally sound and did not place local communities at significant risk
- Despite this, the EPA failed to meaningfully engage with local community groups when helping to develop regulations and making decisions about the spoil
- This approach and the EPA's failure to be fully accountable for its decisions greatly increased community concern about risks associated with the spoil, and was unreasonable
- The EPA approved earlier versions of Environment Management Plans based on deficient information
- These errors were partly attributable to the significant pressure on the EPA to 'fix' problems facing the West Gate Tunnel Project after PFAS was discovered along the tunnel route
- There were significant costs and resources involved in developing regulations, approving Environment Management Plans, remaking the decisions and responding to court proceedings lodged by the community
- The EPA also did not give enough consideration to the possible human rights impacts of its decisions.

Recommendations

1. Review the approach to community engagement to deal more directly with community concerns
2. Consider further improvements to the EPA Charter of Consultation
3. Develop and implement a human rights assessment procedure for internal use
4. Seek consent to publish the unredacted Environment Management Plans and related Assessment Reports.

By the numbers



3 sites

approved by
EPA to receive
contaminated spoil



7 µg/L

max acceptable level
of PFAS that can be
disposed of at sites



0.7 µg/L

highest PFAS level
previously detected
along tunnel alignment



0.12 µg/L

max leachable level
of PFAS reported
in spoil disposed at
Bulla as at May 2022

Final word

'This will, undoubtedly, not be the last 'lightning rod' project in which the EPA is involved. It seems some hard lessons have been learned – which should at least benefit future affected communities.'

Deborah Glass, Victorian Ombudsman