

02 October 2020

Parliament of NSW

Secretariat: Public Works Committee

Inquiry into the cost associated with remediation of sites containing coal ash repositories

By email only: publicworks@parliament.nsw.gov.au

Dear Secretariat

Answers to Questions on Notice

Environmental Justice Australia thanks the Committee for the opportunity to provide evidence on Tuesday 01 September 2020, and welcomes the opportunity to provide answers to questions on notice taken during the hearing.

Fines issued to NSW power stations for coal ash dust related offences

Origin Energy Eraring has received at least three \$15000 fines from the Environment Protection Authority (EPA) for dust escaping from its Eraring power station coal ash repository. These fines were issued for breaches of the power station environment protection licence to prevent dust escaping the premises on instances occurring in 2016,¹ 2018,² and 2019.³

AGL Macquarie Pty Ltd was fined \$15000 in 2020 for excessive dust escaping the boundaries of its Liddell power station coal ash repository.⁴

Third-party auditing regime in Victorian law

The Victorian *Environment Protection Act 1970* (Vic) provides for two types of environmental audits: section 53V environmental audits (**s 53V audits**),⁵ and section 53X environmental audits (**s 53X audits**).⁶

¹ <https://www.epa.nsw.gov.au/news/media-releases/2017/epamedia17020602>.

² <https://www.epa.nsw.gov.au/news/media-releases/2019/epamedia190305-origin-energy-fined-for-dust-emissions-at-eraring-power-station>.

³ <https://www.epa.nsw.gov.au/news/media-releases/2020/epamedia200325-origin-energy-eraring-fined-over-dust-breach>.

⁴ <https://www.epa.nsw.gov.au/news/media-releases/2020/epamedia200707-fine-issued-for-excess-dust-emissions-from-power-station>.

⁵ Environment Protection Act 1970 (Vic) s. 53V.

⁶ Environment Protection Act 1970 (Vic) s. 53X.

The Victorian EPA appoints environmental auditors for the purposes of undertaking environmental audits,⁷ who are registered with the EPA. The Victorian EPA has published guidelines for how environmental audits must be conducted.⁸ There are offence provisions in the *Environment Protection Act 1970* (Vic) for which an environmental auditor is potentially liable for,⁹ including for concealing relevant information or documentation to the EPA when undertaking their functions.¹⁰ If an environmental auditor is found guilty of an offence, their appointment as an environmental auditor must be revoked by the Victorian EPA.¹¹

Environmental audits must be submitted by the auditor to the Victorian EPA, who publishes the environmental audit reports in full on their website.¹²

S 53V audits

S 53V audits are reports in relation to risk caused by an industrial activity. In the Victorian regulatory regime, coal ash repositories are regulated as “landfill”. Coal-burning power stations in Victoria that are licenced to operate coal ash repositories are required to undertake s 53V audits on their coal ash repositories every two years.¹³

S 53V audits assess the risk of harm actually or potentially arising from the operation of coal ash repositories. Environmental auditors make recommendations on what a facility operator can do to improve its practices and reduce the risk of harm associated with the coal ash repository.

S 53X audits

S 53X audits are reports with respect to a segment of land. Such audits are typically required where a development proponent proposes to develop known or potentially contaminated land for sensitive uses, such as residential developments; for a new use of land that has been identified as potentially contaminated; and is mandatory where there is an environmental overlay on a section of land in a

⁷ Environment Protection Act 1970 (Vic) s. 53S.

⁸ Environment Protection Authority Victoria, Publication 953.2, *Environmental Auditor Guidelines for Conducting Environmental Audits* (August 2007). Available at: <https://www.epa.vic.gov.au/about-epa/publications/953-2>.

⁹ Environment Protection Act 1970 (Vic) s.53ZC.

¹⁰ Environment Protection Act 1970 (Vic) s.53ZC(c).

¹¹ Environment Protection Act 1970 (Vic) s. 53ZD.

¹² Environmental Audits are available at:

https://portal.epa.vic.gov.au/iri/portal/anonymous?NavigationTarget=ROLES://portal_content/epa_content/epa_role_s/epa.vic.gov.au.anonrole/epa.vic.gov.au.searchanon&trans_type=Z010.

¹³ See Condition LI_L2 in licence 10961 (issued to EnergyAustralia Yallourn Pty. Ltd) and licence 11149 (issued to AGL Loy Yang Pty Ltd) available at:

https://portal.epa.vic.gov.au/iri/portal/anonymous?NavigationTarget=ROLES://portal_content/epa_content/epa_role_s/epa.vic.gov.au.anonrole/epa.vic.gov.au.searchanon&trans_type=Z001.

municipal planning scheme. In some cases s 53X audits are required after an industrial facility site has been cleaned-up or rehabilitated.

S 53X audits result in either a certificate of environmental audit,¹⁴ which certifies that the land is suitable for any use, or a statement of environmental audit,¹⁵ which states that a site is suitable for some uses or not suitable for any use.

A statement of environmental audit typically includes details on what types of uses the land is suitable for (if any), and imposes conditions on the land owner on how to manage the risks on the land, and what remediation works must be undertaken to remove contamination before a certificate of environmental audit can be issued.

It is unknown whether the Victorian EPA will require that s 53X audits be undertaken when coal ash repositories are rehabilitated.

If you require additional information, would like to follow up on these answers to questions on notice or with respect to any information we have provided to the Committee, please contact Bronya Lipski by email:

Yours faithfully,

Bronya Lipski
Lawyer
Environmental Justice Australia

¹⁴ Environment Protection Act 1970 (Vic) s. 53Y.

¹⁵ Environment Protection Act 1970 (Vic) s. 53Z.