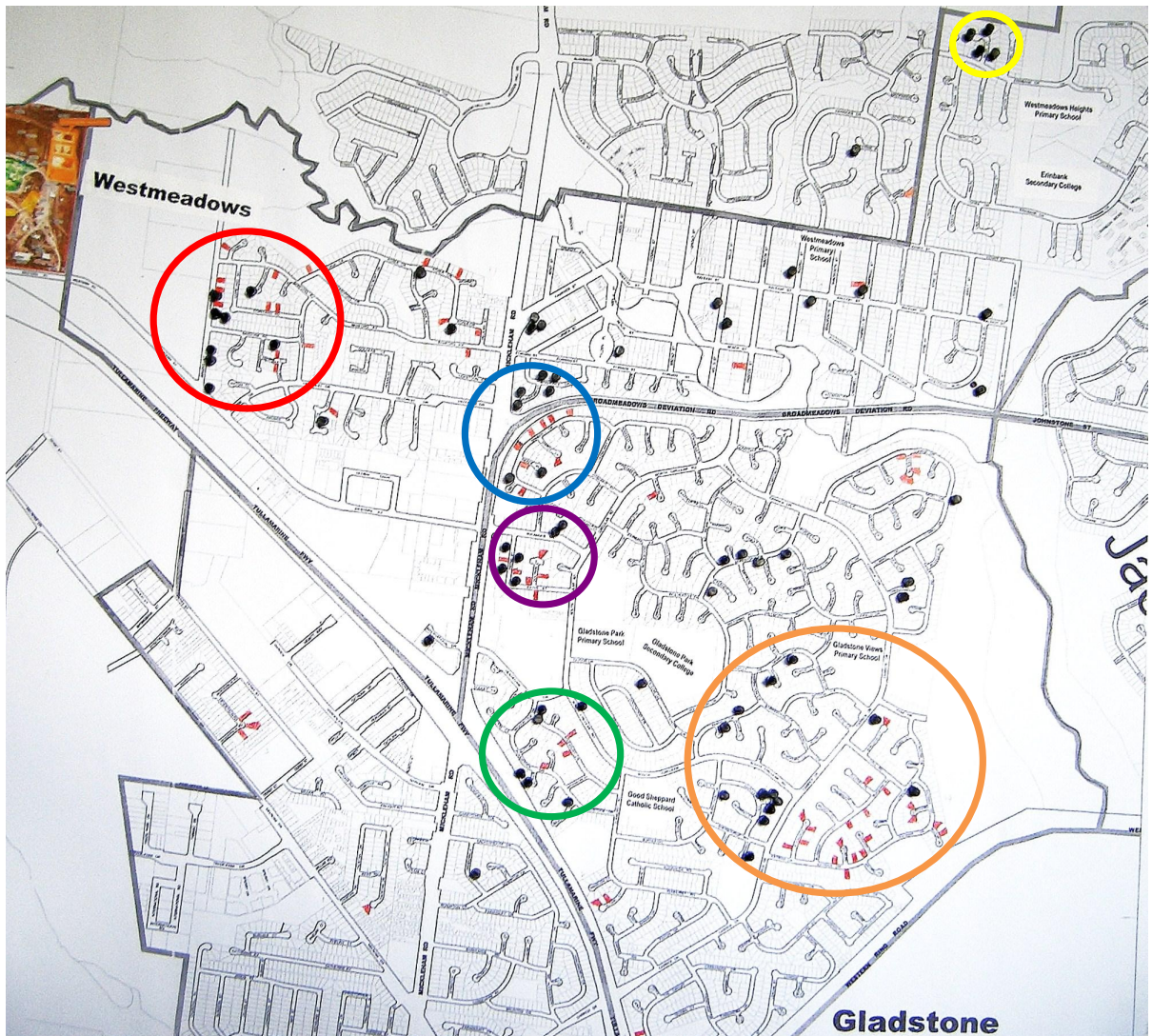


**TERMINATE TULLAMARINE TOXIC DUMP
ACTION GROUP INC
SUBMISSION
TO THE
MINISTERIAL ADVISORY COMMITTEE
FOR THE INQUIRY INTO THE
ENVIRONMENT PROTECTION AUTHORITY
OCTOBER 2015**

Map of Cancer Clusters

Dark blue dots are new cases -- Red dots are cases from previous study report



Since this Cancer Cluster map was compiled by Western Region Environment Centre for TTTDAG in July 2010, the incidence of cancers in the proximity zone of the landfill has risen from 140 to 215. The types of cancers include Breast, Multiple Myeloma, Leukemia, Bowel, Lymphoma, Brain and Pancreatic.

Introduction

Terminate Tullamarine Toxic Dump Action Group welcomes this opportunity to respond to the review of the EPA Act. TTTDAG is a not for profit resident group. It was formed in February 2006 to oppose the proposed

- Expansion of the Cleanaway Tullamarine/Westmeadows prescribed waste hazardous landfill; and
- Establishment of a Liquid Non Aqueous Phase Leachate tank farm. The latter entailed retrieving 30 – 60 million litres of PCB contaminated oils from the dump and store it on site prior to its sale for use in industrial furnaces.

Since the closure of the toxic dump in May 2008, the group has continued to advocate for the rehabilitation of the site to meet community expectations:

- The removal of millions of litres of toxic oils, which float on a mound of water at the base of the unlined leaking landfill.
- Rigorous monitoring of the third rate cap that EPA authorized in 2001 and constructed in 2010.
- No air emission from the flare, which partially captures fugitive, toxic gases.
- Full delineation of the contaminated groundwater plume which is reported as,
“ ... possibly already under homes and at the sentinel well in Wright St. “

In 1970, the EPA authorized our community's chronic exposure to a toxic chemical cocktail. Today our community has five cancer clusters, two in Westmeadows and three in Gladstone Park, with 215 cancer cases recorded, all down wind of the site and within 1.5 km of the site. Repeated calls for a health study on the residents and workers) exposed to air borne chemicals has never been conducted. Reports of high incidences of miscarriages, birth defects, children with unusual rashes, date back to the 1990s. Workers raised issues of exposure to asbestos and chemicals during the 1980s yet we are still battling to ensure the flare meets the specification set by the company and endorsed by EPA and the community. It took four years of advocacy on our part to get the initial inadequate flare that EPA licensed without consultation, to be replaced by a modern, enclosed flare. Once again, we have found EPA behind the times and happy to allowing the company to dawdle it is way through a Pollution Abatement Notice.

EPA is unable to answer the community's question - what is the impact of chronic exposure to a chemical cocktail? Although unable to answer the question EPA has a precautionary principle for such circumstances. Yet, in our case, where the absence of knowledge is clear and has been like that for over thirty years, EPA refused to invoke the precautionary principle to protect public health.

When EPA has sought to rectify buffers following the Brooklyn Greens fiasco they were inconsistent e.g. The requirements for landfills to maintain a buffer for 30 years post closure only applies to type two and three landfills. However type one, Prescribed Hazardous Waste Landfills have no such requirement, yet they too have toxic fugitive gases- not methane but carcinogenic gases, vinyl chloride, TCE, dioxins and furans.

The EPA's poor interpretation of the current Act again causes anxiety and harm to a community that has suffered since the dump was opened in 1972. The EPA seems unable to understand that this legacy is an **environmental injustice**, inflicted on a community without their consent. Nor Does EPA, in spite of encouraging greater citizen participation and waxing lyrical about restorative justice, apply the principals, e.g. Since 2002 groundwater at and beyond the site has been declared unfit for Segment B purposes. No groundwater may be extracted within 5 km of the site. Therefore the community has lost the right to use groundwater e.g. to water sporting ovals during droughts. No compensation has been made to our community for the loss of this asset. Further, more EPA supports the rezoning of the buffer zone which the community is seeking to have maintained. Given the purpose of a buffer zone is for upset conditions and the leaking toxic dump is likely to pose more problems as it ages we find this inconsistency offensive, insulting and a dereliction of duty by EPA. If ever a community deserved compensation for enduring decades of unwanted adverse impacts from a hazardous facility, established for the so-called greater common good - it is this one. Once more, we find EPA's words do not match their actions and publicly stated convictions.

Not only do we have a leaking hazardous facility in the heart of our community we are also exposed to PM 10 and PM 2.5 emissions from the Tullamarine Airport and the Tullamarine Freeway. Where is the environmental justice in that?

It was left to our community to prove that Cleanaway had actually accepted twice as much waste as the license stipulated. Although contaminated groundwater zones are supposedly reported on the EPA web site, there is still no notice of Ground Water Restricted Use Zone surrounding the Cleanaway landfill in Western Avenue. Yet, the GWRUZ records every retired petrol station being rehabilitated. The original 2007 Auditor's recommendation prohibiting the extraction and use of groundwater within 5 km of the dump has since then been watered down to a referral to the auditor. It is still not public knowledge that the groundwater is polluted and unfit for watering parks and gardens, stock watering or refilling swimming pools.

It seems to us that an Act is as good or as weak as the Authority's interpretation of it. Hence, this review of the EPA Act must ensure the language of the act avoids the current subjective interpretations, greater enforcement powers and heavier penalties for polluters. It must be built on the principle that no one or any industry that has a right to pollute; there is no economic benefit that outweighs keeping our air, surface waters and groundwaters, our soils and our unique flora and fauna safe.

TTTDAG welcomes this opportunity to respond to the review of the EPA Act.

Our primary concerns are to have an EPA Act and Authority that:

1. Is capable of protecting and defending public health and nature.
2. Will not condone pollution and will insist on clean production and waste minimization.
3. Is an effective, highly qualified, independent and politically neutral Authority capable of rigorous enforcement of the EPA Act.
4. Has an accountable and transparent reporting by EPA to the community.
5. Protects all species from the many toxic chemicals so widely in use in our society.
6. Is able to conduct independent research to verify claims of safety made by manufacturers of hazardous chemicals.
7. Ensures safe food production and clean surface and groundwaters.
8. Distributes hazardous facilities equitably – not concentrating them in lower socio economic areas as is the current practice - and ensures proper buffer zones.

Our continuing frustration and disappointment with the effectiveness of the EPA is not the focus of this submission. However, our prolonged and painful experience of neglect and indifference by the EPA, plus their poor interpretation of the Act, highlights that no Act will protect you when the EPA's enforcement of that Act is weak. Having an Act to protect land, air, surface waters and ground water, public health and our unique environment, does not guarantee effective enforcement. **Our experience of the EPA is that the Authority is not independent - it is subject to influence by industry and the government's political agenda.** Thus, the Act is compromised. Furthermore, chronic underfunding by successive governments also weakens the EPA and undermines its enforcement capability. Our suggestions to strengthen the Act and the EPA are listed below.

Recommendation 1 General Duty Not to pollute

Currently polluters can be prosecuted after an event and some are made to clean up. We believe the priority should be an enforceable obligation on everyone not to pollute.

Recommendation 2 - Ban lobbying

That the new act must forbid industry lobbying of EPA. That the penalties for such actions include a jail term for those found guilty of lobbying or authorizing such lobbying, and heavy financial penalties for the company represented.

Recommendation 3 - Budget implications

A. That the new Act includes a formula to establish an EPA guaranteed budget for the next 5 years as we rebuild and refocus the Authority

B. To improve EPA's independence and scientific expertise the budget must be commensurate with the needs of the organisation that requires:

- An independent laboratory for testing and research.
- An extensive library.
- Highly qualified officers.
- Continuing professional / scientific development.
- Career pathways to help keep scientists.
- Forbids resigning EPA officers from moving to industry for a period of 5 years.

C. Ensure that the EPA has the resources needed to enforce regulations, inspect hazardous sites regularly, ensure clean up orders are carried out in a timely manner, protect us from noise, asbestos, toxic chemicals and carry our prosecutions and investigations without impacting the day to day running of the organisation.

Recommendation 4 - Independence of EPA

That the Act include in its criteria for selection of the CEO of EPA, that the applicant be either a great scientist or an already distinguished citizen, with the long record of defending public health and / or the environment.

Recommendation 5 – Separation of Powers.

To lessen the likelihood of EPA being captured by industry the Act should separate the advisory and enforcement roles of EPA. EPA should be responsible for the enforcement of the Act, its Licenses, Pollution Abatement Notices and Audits and independent research. The current advisory role of EPA officers, during the Works

Approval process, should be transferred to a separate unit within another department with a sound understanding of the Act.

Recommendation 6 – Greater Powers for EPA in Planning Matters.

Currently EPA is only a referral authority on some planning matters. The new Act must ensure EPA has the power of Veto, particularly when public health is put at risk .e. g. pollution impacts from hazardous industries, roadways, coal fired power generation, buffers between residential areas and hazardous facilities. EPA must be able to mandate that buffer zones be maintained and not encroached upon.

Recommendation 7 - Performance Reviews

That the Act mandates that the EPA be subject to biannual performance reviews by the VAGO. The review be publicly available and invite public consultation and / or submissions.

Recommendation 8 - Transparency

That the Annual General Report include data (not all the green spin we currently get) about achievements, prosecutions, new processes instigated to achieve specific goals, omissions and failures, research achievements; and include maps showing

- The location of all hazardous facilities in the State
- The location of all landfills
- The location of all contaminated sites.
- The sites of significant pollution events e.g. toxic fires / spills

Recommendation 9 – Standards

That the particular standards for known harmful activities be based on world's best practice (e.g. Euro 6, or current US standards). Adopting stricter standards will motivate pollution reduction.

The EPA establishes permanent air quality monitoring stations in locations that are known or suspected to have elevated levels of pollution. Ambient air readings do NOT represent what we are and have been exposed to. Readings must reflect what is in our air at our location. Even when we have had very high spikes of toxic chemicals, we have not received an adequate explanation. In one very worrying instance EPA couldn't conduct the investigation because by the time they received the reports the incident was over! In fact EPA offered an explanation that the wind had carried emissions for an event further away. However as the wind direction was NOT towards us, we refused to accept that explanation!

The EPA must provide access to air pollution monitoring data that supports real time web access to consistent monitoring data, especially for communities living adjacent to hazardous facilities; landfills, airports, freeways, bulk chemical storage facilities, coal fired power generations and coal mines. We have been requesting real time monitoring and reporting for 10 years at Tullamarine! It feels as though we are captured in a time warp destined to live with the failures of the past and prevented from benefiting from current research and scientific breakthroughs.

Recommendation 10 - Audits

Current EPA audit processes do not ensure timely compliance with the audit recommendations nor has EPA demonstrated a capacity to detect errors. E.g. In one audit at Tullamarine the Auditor's report was incorrect by a factor of one million. When we drew attention to this because it meant the community was being exposed to dioxin levels well above the safe standard, we were told the Auditor had corrected it. We repeatedly asked for the corrected copy but it was never supplied. EPA must have the internal capacity to rigorously analyze and scrutinize the reports.

The new Act must also clearly outline the mechanisms by which the recommendations are achieved. Every recommendation must state the compliance date. There must be significant financial penalties for non-compliance with the due date. No auditor should have a monopoly on a particular site, as has happened at Tullamarine. They must be required to report on their professional development and studies, to ensure they understand world's best practice.

Recommendation 11 - Restorative Justice

The new Act should also describe when restorative justice action must be taken to compensate community for any exposure to harm, caused by EPA inadequately licensing a facility or ignoring / or failing to insist on current best practice. The new Act needs to be able to determine the compensation for the loss of groundwater rights around the Tullamarine facility and all other leaking, contaminating landfills. It also needs to address penalties for continuing pollution of groundwater. The Act must not permit groundwater at landfills to be polluted. If this means rewriting the Groundwater Act as well, so be it. The Acts must be consistent. Banning groundwater pollution and then rigorously enforcing it, will lead to less reliance on land filling for waste. Landfills are supposed to be the method of last resort but that is not the reality either. EPA could have decided to safeguard the Cleanaway landfill's buffer zone but instead has chosen to support the rezoning to allow 50 factories to be on the very border of the leaking landfill, even though the PAN has still not been complied with. EPA has not yet

determined how the toxic oils are to be removed. Hence, some workers will be less than 120m from the perimeter of the landfill and be downwind of the flare emitting toxic chemicals. In the event of an incident at the ageing landfill there will be more people in harms way, thus exacerbating an already complex situation.

Recommendation 12 - Financial Assurances

The new Act must address the inadequacies of the sums of money EPA sets for assurances. Assurances must be set in the light of the **cost of future eventualities** At Tullamarine we are told the chemicals will be reacting for at least one hundred and possibly two hundred years. In that time there could easily be failures of the cap and gas extraction system, a subterranean fire, and an explosion.

Recommendation 13 – Accountability

The Act must ensure that polluters are fined, that pollution ceases - not continues and that the polluter pays for the clean up. It must also prevent a company from selling a polluting facility towards the end of its lifetime and prior to Post Closure clean up conditions being set.

Our experience of Brambles Cleanaway selling its landfill just prior to its closure was distressing. We implored EPA to ensure that Brambles retained ownership of the dump. The EPA ignored our concern and the company responsible for causing the continuous pollution of the groundwater, the offensive odours, air pollution and the pollution of Moonee Ponds Creek, was able to avoid the cost of rehabilitation of the site. **The polluter was not made to pay.**

All hazardous sites must be rigorously monitored and reports must be easily accessible to the community. Polluters should also have to contribute a fund to be used by the victims of the pollution to seek independent analysis of the reports the community has to deal with as well as commission independent reports.

Recommendation 14 – Legal rights

Firstly, we have a right to know. As it stands now getting information about pollution, which affects our health, our local environment and us is difficult. EPA's information should be easily accessible to the community. EPA needs to regularly publish data to keep the community informed. Communities impacted by a pollution event must be guaranteed access to all relevant information promptly. Communities must be able to gauge the risks. EPA must have a better threshold for evacuation for exposed communities.

The current practice for dissatisfied communities is to appeal to VCAT who is ill equipped to deal with the scientific matters relevant in many cases. The recent experience of Hume residents at VCAT showed how flawed their understanding was. In this particular case the residents living adjacent to the Bulla asbestos dump, sought to have the facility closed because of years of ongoing failures by the operators to comply with license conditions. EPA had also failed to monitor it regularly. Although residents could detail the non-compliance of the operators to VCAT, it stated there were enforcement issues and this was not a reason to withdraw a license and in fact VCAT chose to extend the license. VCAT argued the site was a designated landfill site and that was all VCAT was prepared to address. Public health being compromised and fire risk increasing was apparently irrelevant. It is hard to believe that VCAT thinks that is good planning but that is what VCAT did!

Therefore, we recommend that appeals should be lodged with an **Environment Administrative Tribunal** that is qualified and resourced to ensure that those hearing appeals have the necessary understanding of environmental law, its objectives and first principles. Such a court must have minimal charges for lodgment of appeals and no fees for sitting days, as is the current discriminatory practice at VCAT.

This tribunal must also be able to direct polluters to establish fund to pay for cost of independent reports or independent analysis of reports Presented by the polluter to the community.

In the case of groundwater, pollution the Tribunal must also be able to order the polluter to establish a facility to extract and clean groundwater before returning it to the environment. This recommendation is based on the New South Wales Environment Court judgment for the clean up of the Orica site near Botany Bay

The right of communities to question decisions and seek redress is fundamental. The current bureaucratic arrangements do not help the community achieve the level of protection we expect. On numerous occasions, we are not even regarded as having standing in an issue. Once we move from a License stage to a post closure stage we have to rely on the EPA's interpretation of consultation. After 7 years of post closure consultation, we have seen our input acted on once! Our presence is required to create the illusion of participation but the reality is, the process is wearying, leads to a sense of disempowerment and does not ensure a cleaner safer environment

Recommendation 15 - Climate Change

The current EPA Act lacks requirements that will allow EPA to protect the environment and public health in the light of climate change. **More frequent and intense extreme weather events** are always a concern, in particularly landfill fires cause additional toxic

emissions. Therefore, the Act should include stronger provisions for minimising the fire risk at landfill sites. Methane emissions from landfill must be strictly controlled. Stronger controls and high penalties for methane emissions could result in less reliance on landfilling, which according to the waste hierarchy is the measure of last resort. Clean production would also decrease the volumes of hazardous waste. As landfills are a continuous source of emissions then reliance on them must be minimized. The current landfill fees are too cheap and prevent the introduction of other technologies e.g. waste to energy. If Paris can have a waste to energy facility in the heart of the city on the banks of the Seine, than why can't Melbourne? Landfilling must become a very, very expensive option. The new Act must ensure maximum recycling and reuse of materials and includes a container deposit scheme. It seems to us that successive Victorian governments have been captured by the packaging industry and thus EPA has been prevented from implementing measures it knows would minimise waste.

Climate change, threatens public health, food production, water supplies and natural eco systems, therefore **EPA must have clear unequivocal authority to regulate all emissions contributing to climate change.** EPA must also ban the use of fossil fuels when renewable energy options are available. If such enterprises need subsidization then the landfill levy can contribute to the transition to renewable energies.

Conclusion.

TTTTDAG's recommendations are motivated by our belief that no future community Victorian community should ever have to endure the health impacts that we live with nor be exposed to the incompetence and indifference of an organisation that was/is supposed to protect us. We believe a safer, cleaner future is possible and our right and the process used by EPA must change to deliver outcomes that meet community expectations. The EPA has for too long ignored environmental imperatives and protected economic outcomes. It has been a pollution authority rather than a protective authority.