



Fact sheet

Your rights and coal-fired power stations in Victoria

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Introduction

Victoria is home to four coal-fired power stations, all located in the Latrobe Valley (Yallourn, Hazelwood, Loy Yang A and Loy Yang B). The Hazelwood power station is being retired from operation in March 2017 and a power station in Anglesea closed in 2015. Victoria's remaining power stations are powered from brown coal (lignite) mined from the Yallourn, Hazelwood and Loy Yang open-cut mines.

The Environment Protection Authority ('EPA') and the *Environment Protection Act 1970* ('EP Act') regulate emissions of coal-fired power stations in Victoria. Power stations release pollutants which can be harmful to the environment and the community.

Communities who live in close proximity to power stations in Victoria have very few rights to enforce licence conditions

and seek remedy for pollution offences. However there are ways that communities can assert their rights, including reporting pollution and emissions to the EPA and taking legal action when emissions are unlawful and a nuisance.

Licences

The EP Act provides the legal framework for licensing and regulation of pollution, and the powers the EPA has to enforce these laws and regulations. The EPA issues licences to power stations, which set out the conditions for operation including pollution management and emissions restrictions. The EP Act sets out the enforcement mechanisms for breaches of licence conditions and prosecution of serious pollution breaches.

In the Latrobe Valley, power stations are located next to the coalmine that supplies them and the EPA licence treats them as a single facility for the purposes of their pollution regulation. However mines also have additional mining laws that they must comply with which are found in the *Mineral Resources (Sustainable Development) Act 1990*. For more information about mining in Victoria and your rights, [see our mining fact sheet](#).¹

In addition to an EPA licence, anyone who generates electricity for supply or sale in Victoria must hold a licence granted by the Essential Services Commission, issued under the *Electricity Industry Act 2000* (Vic).²

EPA licences for power stations

Power stations with an electricity generating power of 5 megawatts or more are identified as a 'scheduled premises' under the *Environment Protection (Scheduled Premises and Exemptions) Regulations 2007*. As such, power stations must not conduct any activity except in accordance with a works approval or licence granted by the Victorian EPA.³

The EPA can impose conditions on licences to minimise and manage environmental impacts from emissions and waste from a power station.⁴ These conditions must be complied with. The licence conditions include the amount of pollution and waste that power stations are allowed to discharge onto land, into water and into the air. Discharge and emissions rates must be consistent with State Environment Protection Policies (SEPPs).⁵ For power stations, the SEPPs that must be complied with include:

- SEPP ([Ambient Air Quality](#));⁶
- SEPP ([Air Quality Management](#));⁷
- SEPP ([Waters of Victoria](#));⁸
- SEPP ([Control of Noise from Commerce, Industry and Trade](#));⁹
- SEPP ([Prevention and Management of Contamination of Land](#)).¹⁰

Power stations must not allow offensive odours, unacceptable noise (including vibration), or nuisance airborne particles to be discharged beyond the boundaries of their premises. The EPA must be notified immediately of any licence breaches.

You can find an [EPA licence](#) on the EPA Interaction Portal.¹¹

1 https://envirojustice.org.au/sites/default/files/files/cels_coal_mines_fact_sheet.pdf

2 *Electricity Industry Act 2000* (Vic) s. 18.

3 *Environment Protection Act 1970* (Vic) ('EP Act 1970 (Vic)') ss. 19A(1), 20; *Environment Protection (Scheduled Premises and Exemptions) Regulations 2007* (Vic) sch. 1.

4 EP Act 1970 (Vic) s. 21.

5 EP Act 1970 (Vic) ss. 38, 40, 44.

6 http://www.epa.vic.gov.au/about-us/legislation/~media/Files/about_us/Legislation/Air/160726consolidatedvariedSEPPAAQ.pdf.

7 <http://www.gazette.vic.gov.au/gazette/Gazettes2001/GG2001S240.pdf>.

8 http://www.epa.vic.gov.au/about-us/legislation/water-legislation/~media/Files/about_us/Legislation/Water/Consolidated%20SEPP%20Waters%20of%20Victoria%20PDF.pdf.

9 http://www.epa.vic.gov.au/about-us/legislation/~media/Files/about_us/Legislation/docs/Consolidated-policy.pdf.

10 http://www.epa.vic.gov.au/about-us/legislation/~media/Files/about_us/Legislation/docs/SEPP-Contam-Land-consolidated.pdf.

11 https://portal.epa.vic.gov.au/iri/portal/anonymous?NavigationTarget=ROLES://portal_content/epa_content/epa_roles/epa.vic.gov.au.anonrole/epa.vic.gov.au.searchanon&trans_type=2001.

The Latrobe Valley is an air quality control region

Under the SEPP (Air Quality Management), the Latrobe Valley is an 'air quality control region' ('AQCR'). As an AQCR the EPA may undertake actions for the purpose of improving or maintaining the air quality of the Latrobe Valley region, including:

- requiring emissions generators to reduce their emissions to a greater extent than currently legally permitted;¹²
- refusing to issue works approvals for large emissions unless emissions reductions can be offset by other sources;¹³
- identifying strategies and priorities for reducing emissions from particular sources;¹⁴
- developing an Air Quality Improvement Plan for a particular AQCR.¹⁵

As a condition of their licence each power station in the Latrobe Valley must implement a program to assess the effect of discharges into the air on the ability of the Latrobe Valley AQCR to comply with the SEPP (Ambient Air Quality).

Licence compliance

Every year, EPA licensees must submit an Annual Performance Statement (APS) that includes an analysis of the performance of the facility against the provisions of the licence.¹⁶ Failure to submit an APS is an offence.¹⁷ The information contained in an APS must be accurate and transparent.¹⁸ Any information contained in or provided in support of an APS that is false, misleading or concealed is an offence.¹⁹

The APS process is an industry self-regulated assessment, meaning that the EPA relies on industry to submit accurate and transparent APSs. The EPA can conduct its own inquiries and audits of industry emissions data recording, and will take measures to ensure compliance if this is necessary.

An APS states whether a power station has adhered to its licence and provides details of incidents reported to the EPA, and the remedies undertaken to address the pollution risk. However the APS does not include specific information on how the conditions have been complied with. The EPA's [License Guidelines](#) provide some information about the practices power stations can implement to comply with their licences, but there is no legal requirement to make this information publicly available.

Information contained in an APS is not admissible as evidence in any proceedings taken against a licensee, unless that proceeding concerns the provision of false and misleading information or concealing relevant information that should have been included in the APS.²⁰

You can find a power station's [Annual Performance Statement](#) on the EPA Interaction Portal.²¹

Do EPA licences expire?

Once the EPA has granted a licence, it does not expire unless it is revoked, suspended or surrendered,²² provided the licensee pays its annual licence fee.²³

¹² State Environment Protection Policy (Air Quality Management) ('SEPP (AQM)') cl. 30(1)(a).

¹³ SEPP (AQM) cl. 30(1)(b).

¹⁴ SEPP (AQM) cl. 30(2).

¹⁵ SEPP (AQM) cl. 31.

¹⁶ EP Act 1970 (Vic) s. 31D(3)(a).

¹⁷ EP Act 1970 (Vic) s. 31D(4).

¹⁸ EP Act 1970 (Vic) s. 31D(5).

¹⁹ EP Act 1970 (Vic) ss. 31D(6), 59D.

²⁰ EP Act 1970 (Vic) s. 31D(7).

²¹ https://portal.epa.vic.gov.au/iri/portal/anonymous?NavigationTarget=ROLES://portal_content/epa_content/epa_roles/epa.vic.gov.au.anonrole/epa.vic.gov.au.searchanon&trans_type=ZAPS.

²² EPA Act 1970 (Vic) s. 26.

²³ EP Act 1970 (Vic) s. 20(9)(a)(vi).

Air monitoring in the Latrobe Valley and access to monitoring data

Air quality monitoring in the Latrobe Valley is conducted in two ways – through monitors owned by the Victorian [EPA](#), and by industry air monitors owned by the [Latrobe Valley Air Monitoring Network](#) (LVAMN).

The EPA has five air monitoring stations in the Latrobe Valley, at Traralgon, Morwell East, Morwell South, Churchill and Moe. These stations [monitor](#) the following pollutants:²⁴

Traralgon	PM2.5, PM10, sulfur dioxide (SO ₂), Nitrogen dioxide (NO ₂), ozone (O ₃) and carbon monoxide (CO)
Morwell South	PM2.5, SO ₂ , CO, visibility reduction
Morwell East	PM2.5, SO ₂ , NO ₂ , O ₃ and CO
Churchill	PM2.5
Moe	PM2.5

The LVAMN has two air monitoring sites, at Rosedale South and Jeeralang Hill. These [monitors](#) measure nitrogen dioxide, sulfur dioxide, ozone, and PM10²⁵. The LVAMN releases [daily graphs](#),²⁶ [monthly graphs](#) (from February 2016 onwards),²⁷ and [annual summary reports](#) on the air quality from data capture by LVAMN data.²⁸ At time of writing this factsheet, [annual reports](#) were available only up to 2014.²⁹

While both the EPA and LVAMN report information collected from their respective air monitors, the data itself is not readily publicly available.

During 2016 the EPA in collaboration with the Latrobe Valley community re-designed the air monitoring network. The new network is expected to be installed throughout 2017 and 2018.

Does the EPA collect LVAMN data?

The EPA does not collect data from the LVAMN. Currently there is no legal obligation for the power stations to report their detailed emissions data to the EPA. Power stations report emissions annually to the National Pollutant Inventory; this is just an annual estimate of total emissions. The community therefore currently has little-to-no access to pollution data from the power stations.

Where is the data from air monitors kept and can the public access this information?

Access to data collected by both the EPA and LVAMN needs to be requested in writing. It can be difficult and time consuming to get this information and the EPA and LVAMN do not have to provide it to you.

- To request monitoring data from the **LVAMN** contact their administrator by emailing lvamninc@gmail.com.
- To request data from the **EPA**, email contact@epa.vic.gov.au with the date range, times and air monitoring areas you would like the data from.

²⁴ <http://www.epa.vic.gov.au/our-work/programs/latrobe-valley-air-monitoring/latrobe-valley-air-monitoring-codesign>

²⁵ <http://lvamninc.com.au/pollutants.html>.

²⁶ <http://lvamninc.com.au/graphs.php>.

²⁷ <http://lvamninc.com.au/graphs.php?archive=yeah>.

²⁸ <http://lvamninc.com.au/annual.html>.

²⁹ <http://lvamninc.com.au/annual.html>.

EPA air quality website

The EPA has two sections on its website that show air quality: an [hourly air quality data table](#),³⁰ and the [EPA AirWatch](#) which contains information for 24 and 48 hourly averages.³¹ Both sites average pollution rates captured from the air monitors.

The hourly air quality table shows the amount of pollutants in parts per million or parts per billion which can be compared to the SEPP (Ambient Air Quality), and rates the pollution figure from very poor to very good. Similarly, the AirWatch site uses an index to describe air quality from very poor to very good, and ascribes a health category to these pollution concentrations from 'unhealthy for sensitive groups' to 'hazardous extreme'. There is no information on either site about what these health categories mean nor what the national standards for air pollution are, and none of the information is available to download for public or independent scrutiny.

EPA enforcement of licences

The EPA has power under the EP Act to investigate potential licence breaches, follow-up on complaints made by communities, and prosecute for breaches of the EP Act. These powers include:

- issuing Pollution Abatement Notices;
- issuing clean-up notices;
- issuing enforceable undertakings; and
- prosecutions in court for more serious offences.

Pollution Abatement Notices

The EPA can serve a Pollution Abatement Notice (PAN) on a power station operator if the EPA is satisfied that pollution or waste is being discharged from the premises in a way that contravenes its emissions licence.³² PANs specify what actions must be taken to address the pollution event or risk. Failure to act on a PAN is an offence that attracts a maximum penalty of \$373,104 and for continuing offences, up to \$186,672 each day the contravention continues.³³

Clean up and ongoing management measures

The EPA can direct a power station operator in writing to clean up and manage pollution on an ongoing basis.³⁴ The EPA can specify conditions, requirements, restrictions, performance standards or levels it sees fit to clean up and manage pollution.³⁵ It is an offence to contravene the requirements of a clean-up notice, the penalty for which is \$373,104.³⁶

Enforceable undertakings

Instead of prosecuting for an offence, the EPA can enter into an enforceable undertaking with a power station operator if a power station contravenes or allegedly contravenes any provision of the EP Act for which the EPA can take proceedings.³⁷ An enforceable undertaking is a binding agreement between the EPA and the person who contravened the EP Act. There are [Guidelines](#) for enforceable undertakings that outline how the EPA can use enforceable undertakings instead of prosecuting for an offence or an alleged offence.³⁸

³⁰ <http://www.epa.vic.gov.au/our-work/monitoring-the-environment/epa-airwatch/hourly-air-quality-data-table>.

³¹ <http://www.epa.vic.gov.au/our-work/monitoring-the-environment/epa-airwatch>.

³² EP Act 1970 (Vic) s. 28B.

³³ EP Act 1970 (Vic) s. 28B(5); based on penalty units, one penalty unit being \$155.46 for the 2016-2017 financial year. See: <http://www.justice.vic.gov.au/home/justice+system/finestandpenalties/penaltiesandvalues/>.

³⁴ EP Act 1970 (Vic) s. 62A.

³⁵ EP Act 1970 (Vic) s. 62A(1A).

³⁶ EP Act 1970 (Vic) s. 62A(3); based on penalty units, one penalty unit being \$155.46 for the 2016-2017 financial year. See: <http://www.justice.vic.gov.au/home/justice+system/finestandpenalties/penaltiesandvalues/>.

³⁷ EP Act 1970 (Vic) s. 67D(1).

³⁸ http://www.epa.vic.gov.au/our-work/compliance-and-enforcement/~/_media/Files/Our%20work/compliance-enforcement/Sanctioning/Docs/Enforceable-Undertakings-Guidelines.pdf.

Community enforcement rights

Emissions or discharges of waste to land, air and water are legal if an occupier is licensed under the EP Act to cause that pollution. The Victorian environmental protection regime has inadequate public reporting and enforcement mechanisms. There is little data readily available to the public. Under the EP Act the community does not have a legal right to prevent, stop or prosecute a company that has breached its licence. Community rights to review EPA decisions regarding licence and works approvals are very limited, and are narrow in terms of who can seek review and what they must demonstrate to show their interests are affected by a decision.³⁹

Can the community take legal proceedings or initiate civil enforcement and compliance measures for breaches of the EP Act?

Under the EP Act, proceedings for offences can only be taken by the EPA or a person appointed by the EPA.⁴⁰ In contrast, environmental protection legislation in New South Wales, Queensland, South Australia, the ACT and Tasmania all contain provisions that allow communities to pursue legal action for environmental harm.⁴¹

With limited exceptions communities who live with coal-fired power stations rely on the EPA to investigate and enforce pollution law.

There are ways that communities can pursue actions and remedies via the EPA. One of the most important actions anyone can take is to report pollution or concerns to the EPA directly. The more people report pollution events or observe concerning activities, the more likely it is that EPA will investigate complaints and use its powers to address or sanction the problem.

Nuisance and the *Public Health and Wellbeing Act 2008*

A nuisance is an interference with the public's right to health, safety, peace and comfort. Under the *Public Health and Wellbeing Act 2008* (Vic) (PHW Act), enforcement measures can be taken to prevent a nuisance that is, or is liable to be, dangerous to health or offensive.⁴² The PHW Act defines 'offensive' as noxious or injurious to personal comfort.⁴³

It is an offence for someone to cause a nuisance or to knowingly allow a nuisance to exist on or come from land owned or occupied by or in charge of that person.⁴⁴ In determining whether an activity is a nuisance that is or is liable to be dangerous to health or offensive, a decision-maker must consider the degree of offensiveness, and must not consider the number of persons affected or that may be affected.⁴⁵ However if a person has a lawful excuse for knowingly allowing or suffering a nuisance to exist on or emanate from land owned or occupied by that person, that person is not guilty of an offence.⁴⁶

It is a condition of each coal-fired power stations in the Latrobe Valley that nuisance airborne particles are not to be discharged beyond their boundaries. The EP Act and the SEPPs do not define 'nuisance' or 'airborne particles'. The EPA's *License Management* guidelines define 'nuisance' as 'something that disrupts normal domestic or recreational activities in the neighbourhood', and 'airborne particles' as including both dust and potentially harmful particles that are likely to damage property, be difficult to remove or adversely affect human health.⁴⁷

If you believe that a nuisance exists, you can notify the council in which the alleged nuisance exists. The council must investigate any notice of nuisance, and either take action or advise you that the matter is best resolved privately.⁴⁸ If the council takes action, it can issue an improvement notice or a prohibition notice, or bring proceedings for offences against the PHW Act.⁴⁹ If the council does not take action within a reasonable time, you can make a complaint to the Magistrate's Court.⁵⁰ The Court can then proceed as though the council has made the complaint. If the Court is satisfied that the

39 EP Act 1970 (Vic) s. 33B.

40 EP Act 1970 (Vic) s. 59(2).

41 See: *Protection of the Environment Operations Act 1997* (NSW) ss. 252-253; *Environment Protection Act 1994* (QLD) s. 24; *Environment Protection Act 1993* (SA) s. 8; *Environmental Management and Pollution Control Act 1994* (TAS) s. 48; *Environment Protection Act 1997* (ACT) s. 9.

42 *Public Health and Wellbeing Act 2008* (Vic) ('PHW Act 2008 (Vic)') ss. 62, 63.

43 PHW Act 2008 (Vic) s. 58(4).

44 PHW Act 2008 (Vic) s. 61(1).

45 PHW Act 2008 (Vic) s. 58(3).

46 PHW Act 2008 (Vic) s. 61.

47 Environment Protection Authority Victoria, *License management*, publication 1322.7 (September 2016) p. 15.

48 PHW Act 2008 (Vic) s. 62.

49 PHW Act 2008 (Vic) s. 62(4).

50 PHW Act 2008 (Vic) s. 63.

person making the complaint has reasonable grounds for doing so, the Court may order the council to pay any costs incurred by you.

Emissions from power stations are lawful provided they do not breach the licence conditions imposed on them, or breach the EP Act. This does not automatically mean that emissions do not constitute a nuisance. However because some emissions and discharges from power stations are licensed, it is difficult to determine at what point a lawful emission becomes nuisance for the purposes of the PHW Act if those emissions do not breach the EPA's license conditions and/or the EP Act. If you believe that airborne particles which are a nuisance are being discharged beyond a power station's boundary you should ask the council to take immediate action under the PHW Act, ask the EPA to take immediate action under the EP Act, or speak to a lawyer about legal action.

Reporting pollution to the EPA

Report pollution by calling the EPA's 24-hour pollution hotline on 1300 372 842. Alternatively you can report pollution online, however to do this you will need to create an account and register with the EPA to access their [Interaction Portal](#).⁵¹

When reporting pollution it is best to take as many detailed notes as possible while you witness the event, or write notes in as much detail as possible as soon as you can. Things to include are what happened, when and where you observed the event, and your contact details.⁵² Once you have made your report, the EPA will assess the information you have provided against their [Compliance and Enforcement Policy](#) to determine what action to take next, including:⁵³

- advising another government agency about the report, such as emergency services;
- conducting an inspection of the incident site;
- conducting a desktop investigation; and
- referring the report to another agency for investigation.

Alternatively they may take no action.

When you make a report to the EPA, they will notify you of the investigative actions they have taken in response to your report.

Regardless of what actions the EPA takes after you have reported pollution, the information is kept on the EPA's databases and used in future assessments. This means that reporting pollution is an important way to build a profile of alleged offences of licence breaches and pollution events originating from coal-fired power stations. Reporting pollution is one of the most important actions communities can take when concerned about emissions from coal-fired power stations and ensuring that information about pollution is recorded by the EPA.

⁵¹ <https://portal.epa.vic.gov.au/iri/portal>

⁵² <http://www.epa.vic.gov.au/get-involved/report-pollution>

⁵³ <http://www.epa.vic.gov.au/our-work/compliance-and-enforcement/ce-policy>

About Environmental Justice Australia

Environmental Justice Australia (formerly the Environment Defenders Office, Victoria) is a not-for-profit public interest legal practice. Funded by donations and independent of government and corporate funding, our legal team combines a passion for justice with technical expertise and a practical understanding of the legal system to protect our environment.

We act as advisers and legal representatives to the environment movement, pursuing court cases to protect our shared environment. We work with community-based environment groups, regional and state environmental organisations, and larger environmental NGOs. We also provide strategic and legal support to their campaigns to address climate change, protect nature and defend the rights of communities to a healthy environment.

While we seek to give the community a powerful voice in court, we also recognise that court cases alone will not be enough. That's why we campaign to improve our legal system. We defend existing, hard-won environmental protections from attack. At the same time, we pursue new and innovative solutions to fill the gaps and fix the failures in our legal system to clear a path for a more just and sustainable world.

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Produced & published by Environmental Justice Australia

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Publication date: 27 March 2017